

FINAL Minutes of the Klamath River Basin Fisheries Task Force Meeting
October 15-16, 1998
Ashland, Oregon
Windmill Hills Inn

October 15, 1998

1. Convene and opening remarks (Barry).

Barry: Good morning. A quorum is present (Attachment 1). This may be my last meeting; I have enjoyed my tenure. I would like to introduce John Engbring who will be my replacement as Department of the Interior (DOI) representative. He is in the California Nevada Operations Office (CNO). Mike Spear is the manager of this office and is member of the U. S. Fish and Wildlife Service (FWS) directorate. John will be the Klamath Supervisor. I have a new assignment and John will be transitioning in.

Engbring: I have been with the Service for 20 years mostly with endangered species. I have been in Olympia for the last seven years. I have worked on several of the tribal committees and I am familiar with some of the President's Forest Plan issues. I am just coming up to speed on the water rights issues. I am excited and glad to be here. Please introduce yourself to me.

Orcutt: Will you assume the Chair of the Task Force (TF)?

Barry: He will be the DOI representative and Designated Federal Official at the next meeting. You will still have to elect a new chair. I have known John for the past several years. We welcome him.

Orcutt: Regarding the Del Norte Triplicate article on the Klamath Restoration Program, I question the slant of the articles. The public is swayed by them. Who speaks for the restoration program? My point: When we speak to the press we need clear, precision comments in speaking for the TF.

Hamilton: I was requested by the reporter to provide a perspective on the program. I have to say that some of my comments were taken out of context.

Fletcher: The more press we receive the better.

Wilkinson: One thing on the Klamath Fisheries Management Council (KC) issues is that there is another Klamath River Task Force. This group is made up of lower river recreational fisherman. There is confusion because of this. I am not sure which one they were quoting in the article. Do we have copyright on our name?

Halstead: When I first saw that name, I thought copyright infringement, but they had that name first. I talked with Solicitors and there is nothing we can do about it. .

2. Brief review of last meeting actions/general correspondence (Hamilton)

Hamilton: Please review Handouts A-D (Attachment 2).

3. Business

A. Adoption of agenda

Fletcher: I would like to add an item which is brief discussion of KC meeting last week.

Barry: We will put it by agendum 41.

Fletcher: I want an item on review of the Coordinated Resource Management Planners (CRMPs).

Wilkinson: Please add a report from Bruce Halstead on Mainstream Spawning escapement.

Rode: I would like a slot to correct some of the misperceptions which may have been left by Bill Kier's remarks on the Shasta River.

****Motion** (Wilkinson) Adopt the agenda (Attachment 3) as revised**

****Second** (Bulfinch)**

****Motion Carried****

B. Adoption of minutes from the June 1998 meeting

****Motion** (Wilkinson) Move to approve the minutes once typographic errors are corrected**

****Second****

****Motion Carried****

C. Decision on \$50k for Humboldt State University (HSU) and Graphic Information Systems (GIS) (Barry)

Barry: Next is the carry over item to decide on the fate of \$50,000; whether or not it was to go to Humboldt State University (HSU) for GIS support work to the Technical Work Group (TWG). I will remind the TF that there was a motion on the table at last meeting to fund HSU for this particular project. I was the only one who voted against it and the reason is that I wanted all of us to see if there was any way we could provide in-kind services to support the TWG with their GIS. Having heard nothing in the last three months from any of the other agencies, I stand corrected. There was a willingness to help out but its kind of difficult to plan ahead with workload and priorities; we don't have the capabilities to devote one whole person or 2 a person full-time to the TWG. Since there is this unknown, I would entertain that it was roundly recognized that we all supported the GIS effort at the cost of \$50,000. I would like to entertain a motion to go ahead and fund it.

****Motion** (Hillman) That the TF fund fully the GIS work at HSU for \$50k.**

****Second** (Fletcher)**

Orcutt: There is work on the Trinity side as well as the upper basin with GIS efforts. We need to coordinate efforts and see where there are cost savings.

Fletcher: The FWS and Bureau of Reclamation (BOR) have pushed to get a Klamath basin coordinator as called for in the 1995 or 96 reauthorization of the Trinity Restoration Program. That is an assignment Bernice Sullivan should look into and follow through on.

Barry: Good point. We will highlight that in the minutes.

****Motion Carried** (Bitts abstains)**

D. Fate of request for 8 percent overhead reduction (Barry)

Barry: The \$80k is in our budget set aside. Back in February, Nat signed a letter asking that overhead be reduced. The TF has no written reply yet because we do not have an appropriation to date. Regional Director Ann Badgley has not been able to address this. I ask for your indulgence. I did discuss it at length with Mike Spear. We should get back a letter to you this fall. The \$80k is for RO support for this program. Those functions still remain in Portland.

Orcutt: Within the FWS budget development process, has there been a request for additional funding?

Barry: Region 1 did request a significant increase in year 2000. We do not know its fate.

Orcutt: The FWS document would be strengthened with support from constituents.

Barry: Absolutely. We will carry this item over to the next meeting.

E. Status of gage funding (Barry)

Barry: Both the FWS and Klamath National Forest (KNF) have picked up gage funding. Through the Ecosystem Restoration Office (ERO) we are paying for two gages, the Shasta and the Scott. The KNF picked up the Salmon River.

Fletcher: The Trinity Program is funding the lower Klamath River gauge.

Barry: Why not address next years gauge funding in the Request for Proposals (RFP) process?

Bulfinch: If an agency has an interest, they should participate in funding.

Barry: At the last meeting we agreed that I send a memo to the DOI secretary regarding the gauges. We all concurred. That letter has been drafted I will look at it again. This discussion spurs me on to get this letter out. I will act on that still.

Fletcher: We may have done so previously. I recall Patricia Beneke saying that she supports funding for the gages. It would be worth saying that in the letter.

Barry: Thanks for the reminder.

Reck: There are two questions: which gages are needed and then how do we fund them? You can't get to the second without answering the first.

4. Election of a vice Chair for the TF (Barry)

Barry: Also a carry over item, we do not have a vice Chair. Without a vice Chair we do not have anyone to chair the next meeting or sign some of the correspondence.

5. TF Discussion

Fletcher: Lets do both at once.

Orcutt: There is no stipulation preventing a non federal member from being Chair.

Bulfinch: There were two nominations. If there's only one, we can do it by nomination. If there's more than one, we need a secret ballot.

****Motion**(Smith) I nominate Keith Wilkinson for vice Chair**

****Second**(Bulfinch)**

Bulfinch: In addition to his character, there is an emphasis is on the upper basin for a large part of the program. As the representative of Oregon Department of Fish and Wildlife (ODFW), it is logical for Keith the to be the vice Chair.

Hillman: We have had a discussion about combining the Chair and the vice Chair elections. Can we put more than one nomination on the floor?

Barry: Procedures say we have to vote by consensus; if we have more than one nomination on the floor, it would not work well. Let's discuss it in the context of Joan's motion.

Rode: I suggest we entertain both. There are a number of potential nominations out there. Lets go around the table, solicit nominations of individuals, and put them on the ballot, then count up the votes.

Orcutt: There are a number of votes not here. There were strong concerns from the Klamath Tribe at the last meeting.

Rode: I sympathize, but is there any way to guarantee full participation next time? We will be leaderless. We have a strong quorum now.

Barry: It was clear at the last meeting that we would be voting now. I concur with Mike Rode.

Bulfinch: We do not have do this by consensus.

****Motion withdrawn****

****Second accepts****

****Motion** (Rode) That we suspend the consensus procedure of this group in order to facilitate an election of the Chair and vice Chair of the TF under a simple majority procedure.**

****Second** (Bitts)**

Fletcher: I will not support any motion to suspend the rules.

Russell: When we talk about departing from the consensus process, then we could do again in the future. If so, we could pass the Upper Basin Amendment (UBA). We have the rule; we should just vote.

Barry: I prefer to have a consensus vote to suspend the rules. I will vote in favor because we need to proceed. In answer to Troy's issue, we can all agree that it is of benefit that we have a Chair for the next meeting. This is a good fall back position and it is fair. Let's conduct ourselves in a manner as other elections are in the country.

****Friendly amendment** (Wilkinson) To conduct the election by secret ballot.**

****Maker of the Motion Accepts** (Rode)**

****Second Accepts** (Bitts)**

Bitts: If we do not suspend the rules we will not get a new Vice Chair or Chair. For clarification, it means we also needs to have consensus to suspend the consensus process.

Barry: We formed a charter and agreed to decide by consensus. The DOI secretary can do otherwise.

Hillman: On the issue of the Chairmanship being part of this discussion, the issue of Chairmanship was one of verbal notification only this morning. I offer that election of the Chair may sway the Vice Chair election. The TF may want to deal with the issue of the Chairman first.

Orcutt: We need to keep the level of trust. I know it is hard to get a hold of Elwood; he felt strongly and he's not here.

Smith: I have an impossible schedule there are three meetings that I am supposed to be at. We may not have leadership at the next meeting. The world is run by those who show up.

Fletcher: All TF individuals have the ability to occupy the Chair or Vice Chair position. It really does not matter that we throw both on the table at once. I have concerns about whether the Chair is a Non Governmental official (NGO) or Federal representative. Who I vote in for Vice Chair depends on who is picked as Chair.

Wilkinson: Because there is opposition, if we cannot come to agreement on a consensus basis then would DOI make the call?

Barry: The legislation charges the Secretary of DOI to implement the Act. The charter says consensus and the Secretary has signed the charter. Only the Secretary can revoke his name from the charter and can choose to proceed as he wishes. I am the spokesperson for DOI and would carry forward his wishes. So I would not submit my resignation until this issue is resolved. I will try to operate by consensus to make sure all voices are heard. If we cannot reach consensus, then I will chair the next meeting and bring forward the wishes of the Secretary at that time.

Russell: The agenda says vice Chair. I would hope we would honor the agenda as approved and proceed with this item.

****Motion Fails** (Fletcher, Hillman, Orcutt -No)**

Bulfinch: This is taking too much time. In the past the meeting has been conducted by the project leader and the world did not come to an end. I am suggesting that consideration be given to completing the process without too much emphasis on individual agendas.

Fletcher: Now is the time to deal with both issues in one fell swoop. I do not feel comfortable on voting on just the Vice Chair, without an understanding of who is the Chair and whether they are a NGO versus a federal representative.

****Motion** (Bulfinch) I move we table an election of a Chair or Vice-Chair until the permanent DOI representative is on the TF.**

****Second** (Wilkinson)**

Barry: For clarification, your motion is that we defer the election until the next meeting?

Wilkinson: Passage would make you the permanent, defacto chair. I would vote against it for that reason even though I seconded it.

Bulfinch: That was the intent, the permanent representative was meant to be the current DOI representative.

Russell: I would like some assurances that next time we would resolve this.

Barry: I do intend to have a discussion on this with the Secretary. If all else fails, I will have a plan A, B, and C from the Secretary on how to proceed. It is my intent to resolve this.

Bits: I support this motion because its the only way we can get off the agenda item. The next meeting should include the election of both positions.

Barry: It was my conscious decision that a decision only be for the Vice Chair. It is appropriate that John do as I did, that he sit in as a member for at least one meeting before he is considered for nomination and that you feel comfortable with the nomination. I purposely did not put the Chair election on the agenda for that reason. I guess we will accomplish the same thing by deferring to the next meeting anyway.

6. Public Comment

Barry: The public needs to know that anytime before we have a vote, you are all encouraged to speak to the TF. Some times I am not mindful of the public waiting to comment, so don't hesitate.

Marcia Armstrong (Executive Director of the Siskiyou Farm Bureau): Related to the composition and leadership of the TF, as I pointed out to our Congressional representatives, there is no representative on the TF for industry such as agriculture, mining, timber or the public at large as private property owner. However, in addition to agencies, tribal government and county governments, there are representatives from in-stream sports fisherman and for oceanic fisherman. I served on the TWG for a year; I've seen that there is a death of scientific disciplines such as agronomy, range biology, and range ecology. I'm afraid that the TF is not getting that large picture of the entire watershed and the watershed process. I would really like to see those representatives seated.

Barry: It is the enacting legislation that determines who will be TF members. Amending that legislation through your congressional representative is the only opportunity for you to add representation. Thank you for that comment.

7. TF Decision

****Motion Clarified** To defer the decision on this issue to the next TF meeting where we entertain the election of the Vice-Chair. Cindy being the current Chair, shall chair the next meeting.**

Hillman: I thought earlier in the agenda you put on the table that we are making a decision on both the Chair and the Vice Chair?

Barry: I never put on the agenda to decide on the Chair.

****Motion carries** (Hillman, Fletcher and Orcutt abstain)**

8. Update on Klamath Basin ecosystem restoration issues before Congress (Staff from the offices of Senators Wyden and Smith as well as Representatives Smith and Herger) and Provision of Prioritized Restoration Needs to Congressional Representatives (Barry)

Dave Meurer (Congressman Herger's Office): My key purpose for being here, in addition to my own education, was to specifically learn what project(s) upon which the TF had agreed remained unfunded. Specifically, I'm asking the TF for really a bottom line. What is the dollar figure and what are those projects where you have reached consensus and they are sitting on the shelf awaiting funding? Basically, we are looking for a win-win scenario to take back to my boss for funding consideration and to advocate those projects where you have reached consensus. This will be made more difficult by a letter I received from Dave Webb, one of the CRMP coordinators, that will be a red flag. It goes to the heart of, is there a consensus on a flow study as one of the issues that I thought there was consensus on. I was under the impression that there was a funding concern. I would like to hear from the TF or sometime in the near future whether those issues, concerns, and/or allocations which are going to be very big, red flags to my boss are being resolved. I don't know if there has been a formal response to Dave Webb's letter. I don't know if the entire TF has seen that.

Barry: There has not been a formal response. We have not officially responded back. In response, we do intend to get you a prioritized list and I have asked the TWG and TF to work in this regard (Handouts E and F). Hopefully we will reach consensus on that.

Fletcher: It would be good for you and Congressman Herger to get a copy of Klamath Act. The intent of the Act is to restore anadromous fish populations to optimal levels in the Klamath River. We have a Long Range Plan (LRP) this body accepted. Some goals and areas of the LRP are controversial. There may be times when there is not consensus. What is important for you to know that we have gone through a couple years of negotiations to get flow study information on the ground. We have technical scoping completed. We addressed this very issue when the Klamath Forest Alliance (KFA) presented some potential funding requests and then later pushed for more funding in the Klamath (copy of the KFA letter was sent to Meurer). The TF agreed with the amounts of money he requested. There is consensus out there; do not let a few bumps in the road deter us from anadromous fish restoration; let's build on what is out there.

Meurer: I understand; why not start there. I am seeking clarification on what has been agreed upon. If I can get that with a dollar figure attached that would be helpful for my purposes.

Smith: A lot of what Troy said I agree with. However, until we get to agenda item 14 I am going to reserve comment. I hope that Congressman Herger's representative will stay for that.

Barry: The TF supported KFA's proposal to Congress which was targeted for 1999 budget, but it was for general categories, not specific to tasks. We will give you a copy of that. We still have some priorities which were under discussion within those categories.

Orcutt: Is your request for FY99 or beyond that? Last week KC agree that there is inadequate money for management of listed species and harvest management.

Meurer: It is always useful to receive a consensus recommendations from a multitude of entities, especially disparate interests. When we see them come together on a project, then it is easy to move forward. When you have done some hard work on reaching agreement, then your labor should be rewarded.

Barry: Will you be our conduit to the Hill on the future?

Meurer: I will stay in contact and try to be in the future.

Barry: Right now we have a crisis in funding gages. That is an issue for 1999.

Meurer: I will take notes throughout the day.

Bits: You have heard about severe under funding of essential projects in the Klamath Basin. I know both the Klamath and Sacramento basins are in your district. They are getting 10's of millions for work in the Sacramento and we are begging for gage funding, a small ticket item. I just heard of the \$60 million for temp control in the Shasta Dam. We are begging to get harvest management funding; we are trying to get \$80k for overhead. We have to get a line item for appropriation in the Klamath for essential fisheries monitoring.

Meurer: It is easier to get a handle on an object rather than a process or a study. If you have a tangible object for funding with a fixed price tag, it helps the bottom line for our purposes. If you have done that, its on paper and there is consensus, this is the type of thing that is a win-win situation.

Hillman: I concur with Bits. We call it the Klamath program, yet the money does not even cover monitoring.

Barry (to Meurer): Thanks for coming. I have been working with the TF and TWG on priorities (Handouts E and F). As we progress with the agenda, we will flesh this list of priorities out and get this list to you.

Russell: I would like to introduce the co-Chair of the Klamath County Commissioners, Steve West, my boss. He is soon to be chairman of the Board of Klamath County and may have some comments about representation.

West: Don and I both work for the same boss, the people of Klamath county. I would also like to see broader representation. The comments of Siskiyou County were well taken and perhaps there can be a process for doing this.

Fletcher: I represent the Yurok tribe, but there are Yurok tribal fishermen not represented here also. If we open this up, we need to be clear that we have no tribal fishermen represented.

Public Comment

Vlayn McCovey: Troy is correct. If you open it up, you will need to include the Yurok fishermen.

Barry: Thank you for those thoughts.

9. Identification of priority funding needs from the TF (i.e. for the California Water Commission and others) (Lewis/Fletcher)

Lewis: Make sure you portray me as messenger that happened to be at the right place. This is same request that Meurer presented only from a different group. In one of the steps of the elevation of Klamath water issues over the last few years, the California Water Commission came to Klamath Falls and Yreka to get background. Both Fletcher and I were at their Klamath Falls meeting. At the time they came forward, we did not recognize past lobbying abilities. We approached the meeting as an informational meeting. Mr. Fletcher covered funding shortfalls. The Water Commission Chair and said, Acan we get some information from you on TF priorities?@ This was in early August. We went to get a list from Ron Iverson, but he was concerned about meeting the trust of the TF consensus process. So we went down in September with the same Commission and said the TF would meet in October and would come forward with priorities that had consensus. We talked with executive director and Chair of Water Commission. What they want are items which they have consensus on, they want specifics, and they want prioritization. Gauges would be such an item. They will go back in March to start soliciting for FY2000 and any dollars available from reprogramming for FY98. They expressed the need to have a prioritization list as soon as possible. This list would be given to the California Water Commission and California Reclamation Board. The message is this is an opportunity for the TF to address some funding needs.

10. TF Discussion

Fletcher: There are two similar requests; one from the Congressional Representative and one from the Water Commission. I know that Cindy asked the TWG to come up with a list. The list we come up with needs to be technically tight. We need to be guided by the science.

Barry: These two bodies are sources of funds, or would they be lobbying on our behalf to increase federal appropriations?

Lewis: They asked for a list to influence federal appropriations. At the same time if you have a list agreed to by this TF, there may be opportunities to look at funding from other sources.

Wilkinson: We have worked to prioritize and still are. Has there been any discussion of an overall Klamath package? We are arguing over the small stuff.

Lewis: What you are getting at is comprehensive funding for this TF. We are getting into an area I cannot, as a federal employee get involved with, but there are ways to do it.

Orcutt: This is a lobbying group. The question is exactly what this group represents what their purpose is? I am in the dark.

Lewis: My understanding is the California Water Commission is the governing body for the California Department of Water Resources. Bill Bennett brought the commission up here.

Fletcher: They are appointed by the governor and get involved in lobbying.

Lewis: The Reclamation Board is also appointed by the Governor; Frank DeGalo has been the contact. They regulate construction and use of flood plains, building of levees, construction of water storage on behalf of state. He's been involved with the elevation of Shasta Lake and Auburn Dam on behalf of the state.

11. Public Comment

Armstrong: It's important to get the landowners' cooperation with restoration projects (such as spawning surveys) to be successful in using the money for the project. Without the landowners feeling that they have representation and some control of the implementation of surveys, plans or whatever, you will run into substantial barriers. We will discuss some of that today.

Barry: Thank you.

Bulfinch: We have been asked to prioritize projects. There has been reference to investments in projects which may have been altered by flood. It would appear that we need to identify as a priority to preserve what we have already done in the past. Thus, it is a priority to work through the Federal Emergency Management Act (FEMA) process. Who should appeal to FEMA, the TF or the landowner? This may mean communication to land owners that they should apply for funds to fix restoration damaged by flood. I do not know how to approach other than to bring it up. There are 1997 funds which are related to the flood. I do not know what the time limit is on this.

Barry: Thanks; let's place on this agenda for the future. It's worth asking Bill Kier about this when he comes up. Kent, regarding your concern, perhaps you can work with the Yreka staff, do some research and bring this up at the next meeting.

12. TF Decision

Fletcher: We have a task ahead to develop priorities. We need to take advantage of that opportunity; the TWG should take the first crack at it. We know some priorities; we know the flow study is a priority. Let's not lose the opportunity and work on this tonight.

Barry: Thank you.

13. Presentation on the Status of Fisheries in the Klamath Management Zone and Comments on the Effectiveness of the Klamath Act (Jimmy Smith/Troy Fletcher)

Bits: I have a letter to pass out (Handout G). [Reads letter] This is from Jimmy Smith one of the prime movers on restoration in Humboldt County, if not the north coast. If I could add a comment on the status of the fishery, whenever the projected population of Klamath chinook is enough to get us off the floor (where we are not managing for the 35k escapement as the objective for that year), the ocean share is about a 20 percent harvest of the age four Klamath Fish. More years than not we get to manage for about 9%, meaning we are about half way. Despite the best efforts of this program and others there are not many Klamath Fish making it to the ocean. The situation is not improving.

Fletcher: It is important to look back to the intent of the Act. Not only are fall chinook populations low, but coho, steelhead, spring chinook, sturgeon populations are also low. They may go extinct but not due to sport, tribal, or commercial harvest. It is important that we look at habitat issues hard.

Wilkinson: Oregon put a supplementation proposal on the table in terms of fall chinook harvest several years ago; that proposal has never even been responded to. It is interesting to me to see the letters from the Klamath Guides association and Jimmy Smith's letter suggesting some specific steps that might be taken. We really have not followed up on the intent of the Act. I can't help but wonder had we embarked on any of these efforts offered then, where would we be now? Hopefully no worse.

Barry: What action you want to entertain or is it mostly for information?

Bits: It is mostly for information. There are some specific suggestions in the last part of the letter that could in the short term increase populations of fish for harvest. I would also direct your attention to the language about lethal water conditions becoming a recurrent problem. Dissolved oxygen in the summer at night is a serious problem. If the Klamath River is killing its children, then whatever else is being done won't matter; we won't get results.

Smith: There has been exponential growth in the number of marine mammals at the mouth of the river; that's an issue that we have not addressed.

Orcutt: There has been discussion on having a joint KC/TF meeting. On agenda should be the question of "What are the management objectives for fall chinook in the Klamath?" There are a lot of misconceptions. The fish managers and habitat people each have their own perceptions. It would be good to air this question; it would speak to some issues including supplementation. Klamath stocks are managed for the wild fish component. They are managed for some harvest rate to see what the productivity is. There are overlaps between the KC and TF missions.

Bulfinch: California Department of Fish and Game (CDFG) is forbidden to run a supplementation hatchery and Pacific Power will only pay for mitigation for the loss of habitat due to the dam under the Federal Energy Regulatory Commission (FERC) license. Supplementation needs to be done which is closer to the ocean so that wildstocks are not impacted by straying. We might need to give thought to two separate objectives: sustainability of present fisheries and restoration in the future.

Barry: How is this addressed in LRP?

Bulfinch: Very vaguely.

14. Status of DOI's flow study report and recommendations (Robert Anderson, Counselor to Secretary, DOI and Dr. Thom Hardy, Utah State University)

Barry: I would like to introduce Counsel to the Secretary of the DOI, Bob Anderson, and we will hear from Dr. Thom Hardy.

Bob Anderson: Thanks Cindy and TF members. I want to put into perspective what I am doing on the Klamath Adjudication and the associated alternative dispute resolution (ADR). It's a project that is very important to the Secretary's Office and to the DOI as a whole. Generally when we are involved in state water adjudications, like the Oregon case, we have a policy (that Secretary Babbitt has carried forward from Secretary Lujan in the Bush Administration) to try to settle these disputes rather than litigating them. We have about 19 of these cases going on throughout the west and there is a procedure in setting up Federal negotiating teams to try and facilitate settlements rather than litigating the issues. Typically, what comes out of these settlements is a definition of relative water rights of the parties that are involved: Indian Tribes, non-Indian irrigation districts, private water users that are not associated with irrigation districts, and any other water right claimants involved in the

adjudication which by law has to have every affected user included in these adjudications. That's what we are facing up in Oregon. The case has been in litigation for about 15 or 16 years. Now we are finally down to the point where claims have been filed by the United States and by all the private interests involved in the case. There are several types of claims. Claims that the United States has are made on behalf of Tribes are two different types: one, instream flow claims that are largely above Upper Klamath Lake (UKL) to maintain fisheries habitat in Sprague, Williamson and other rivers.

Secondly, claims have been made to waters and certain lake levels in UKL in order to preserve habitat for the fish that are also listed under the Endangered Species Act. There is also a biological opinion by the FWS that addresses the minimum lake level for Klamath lake.

Thirdly, the United States filed claims on behalf of the Klamath Project the irrigation district claiming water for irrigation purposes. There are other claimants that are not associated with the irrigation district. They are also before the court and they are also part of this alternative dispute resolution process that Martha Pagel and the State of Oregon are spearheading. That process is set up by the State and has a three year time frame. They are very firm in terms of adhering to this three year time frame. Its parallel to the actual litigation and adjudication time frame that's being conducted before the Oregon Department of Water Resources. The litigation is ongoing, but most of the energy is being devoted to the actual negotiation in an attempt to resolve the issue by consensus. The problem we face is that one year from now the State of Oregon is obligated to report to an administrative judge here as to what its views are with respect to water rights claimed by the United States, the Tribes, and every other claimant involved in the adjudication. As part of the process, we are hopeful we'll have a settlement proposal to offer to the administrative law judge, in lieu of litigating the claims. Such a proposal would lay out first what the stream flows are that can be agreed on in the rivers above UKL. Then secondly, on the lake level and how the irrigation district would be dealt with as well as the other water users. In order to do that, we are going to need to study and obtain funding for water supply augmentation projects. There is a study group considering those alternatives. We have picked seven to eight of those out of that process and are trying to move those along on an accelerated basis.

There is a pretty good consensus between the irrigators and the Tribes of the United States and other affected users in the State of Oregon that certain projects such as raising UKL merit a hard look sooner rather than later. We are trying to get the BOR to study those projects. The problem is that the State of Oregon and the water users want to know that if we reach a settlement on the Oregon side of the border there are assurances that someone is not going to come back in six months, in a year, or in five years and say that more water is needed for tribal claims or require more water under the Endangered Species Act (ESA) for species proposed for listing. That is a reasonable question raised by the Oregon side. My response is to talk with folks within the DOI and get Thom Hardy on board to look at ideas that are already circulating as a result of your work and as a result of work done by the Tribes to provide an initial estimate of what Oregon's contribution to the mainstem should be. I would like to be in a position in about a year to propose a figure that could provide some level of certainty. We are not going to be able to write that in stone in one year, but I would like to be able to move a settlement forward on the Oregon side in two years and say what we expect your contribution to be and have a number based on Thom's work with you.

The Tribes have ideas about habitat improvement along the Sprague and Williamson rivers that will improve water quality flowing into Klamath Lake which will reduce the need to have a higher lake level. The FWS is interested in filling out the boundaries of the wildlife refuges particularly upstream of Klamath Lake. If we can acquire those properties, as anticipated, that will have a beneficial effect on water quality flowing into Klamath Lake as well. With all these water rights settlements that have gone before (there has been about 12 or 13 of them since the early 80's involving Indian water rights, BOR projects, and other interests) there is always an off-ramp. If we get to a point where some unforeseen circumstances arise and we need more water from Oregon, we are going to have to build in a mechanism that all bets are off and go back to court to adjudicate. In order to compensate for the lack of absolute certainty, we are going to have to build some flexibility into the number and the assurances so that Thom can get us a figure in two years, then as the work is going on, we can refine and make adjustments. If the State of Oregon comes back, or the private water users, or the Tribes say that is not enough and they want absolute certainty, then it will have to be resolved through litigation. In contrast to litigation, settlement possibilities will move along water augmentation and this would result in money to accomplish the projects.

Dr. Thomas Hardy (Utah State University): There is some confusion why the Department of Justice (DOJ) is involved. I was already under contract with DOJ, they used an existing contract. But I work for Mr. Anderson and the Bureau of Indian Affairs (BIA). The work needs to occur in two phases. Phase I is in the next few months. We are going to look at the historical context of flow in the basin. We can then make some flow recommendations that can be used within this year for water planning and give it to Mr. Anderson. First, we need to do a study to meet Mr. Anderson's needs under Oregon Alternative Dispute

Resolution (ADR) process. Secondly, we need to meet the ongoing annual needs relative to KPOP. Third, we need to be compatible with the efforts of the TF, U.S. Geological Survey (USGS), and Tribal programs. There is no secret conspiracy.

In Phase II, we need to get in the mainstem, the Scott, and Shasta Rivers to know what flows out of Oregon need to be to ensure runs. I cannot do it without the information on the tributaries. We'll begin with the federal family, BOR and TWG to find out how we can do it in two years and also meet the strategic objective of the TF. The data collection would meet the needs of BOR, KPOP, Tribal programs, and USGS in light of what they have brought to the TF regarding salmon and IFIM. I have talked on the phone with CDFG and Gary Smith on the Habitat Suitability Curves (HSC).

Smith: I have the minutes from the TF meeting in June 97 where the TF approved the \$50,000 for the mainstem. At that time, there was no knowledge of another study. I understand it now to include Shasta and Scott. When did the TF get piggy backed into working in the Tributaries? Where do the other funds come from? Have you expanded the study? Who owns the data?

Hardy: A little foundation on this. Over one year ago at a TWG meeting, we were asked to give technical opinions. This was the first time we discussed airborne remote sensing. Those discussions went before the TF. Some time later the study expanded and the National Marine Fisheries Service (NMFS) and BIA felt that would be an opportunity to do more. They both provided pots of money to be used to fund the Tributary work.

Smith: The first time I met you was in Eureka. We discussed a flow study in the Klamath. Part of the problem is that we only agreed to Iron Gate Dam (IGD) to the mouth. The people of Siskiyou County thought the study was from the IGD to the mouth. It has gotten away from this. You know how critical this is. These are critical issues to me. I have worked hard and long to develop trust with landowners. How can I trust what you are saying now? I want to know if this is part of a lawsuit on behalf of the Tribes.

Anderson: There is no reason why this information is not made available to everyone in this room. This data was to be use to facilitate a settlement; we will make it available to you and vice versa. We are not contemplating a lawsuit again anyone in California. The data are for the ADR. If they can be used to accomplish longer term goals, that will be another effort.

Barry: Is the issue that the \$50,000 was used in way TF did not intend?

Smith: I want it in writing that what we decided here will not come back to bite us. I do not want to hurt people that I represent. You make me real nervous.

Anderson: Oregon started a lawsuit and dragged us in. As far as I am concerned the information should be available to TF, citizens, you, the constituents, and irrigation districts. However, if someone takes the information and uses it for lawsuit, I cannot control that. I represent the DOI. I am here for two more years. We have support from the Tribes and Kitzhaber.

Smith: What does that have to do with tributaries in the Scott and Shasta?

(Anderson to Hardy). Hardy: FWS says that we need that information. Folks in Oregon say we should not be taking the hit for all of California ourselves.

Smith: There is one more issue. At the ground truthing workshop where CRMPs were called in, they were led to believe that this is a TF project. This has been misrepresented to local volunteer groups.

Hardy: I will take responsibility for any misrepresentation. The only part of digital imagery being paid for by the TF is the mainstem. Decisions on spending TF money elsewhere will come back to the TF. But we also have an opportunity on the tributaries. We are not trying to do anything to destroy trust. My understanding is that the TF approved USGS plan. I have been trying to get the information that achieves the strategic plan of USGS.

Fletcher: We never decided to limit the study to the mainstem. This body has known that and will address issues related to fish basin wide. Our position is that we are charged with restoration of anadromous fish.

Russell: For Hardy, you mentioned that you would review data on historic flows, how far back and on what tributaries?

Hardy: I'm not sure how far back. It depends on my review. I have appointments to look at the FWS library and accumulate as much information as possible. There is a lack of systematic data in the basin. I assume I will look at the Scott, Shasta and Salmon Rivers. To the extent other information as it is available, I will use it.

Rode: I am concerned with timing and how will it come together through the ADR . If it comes together, we do not have a parallel process for the Shasta and Scott. Will we end up with a shortage at IGD based on estimates at the Shasta and Scott?

Anderson: We will do the best we can to provide that IGD figure with some flexibility. A conservative figure and we will work down from that. Hopefully, flow augmentation will have helped. If not, it could throw it back into litigation.

Barry: Through monitoring, we need to determine what is happening. This will have an adaptive management component which would respond to your concerns we are hearing today. It is a vision that in two years will come up with a number.

Hardy: We can look at the mainstem and ignore the tributaries or by some method we will do estimate of relative contributions the tributaries that has a mass balance down the river. Someway, we'll have to make a best faith estimate. Over the long haul, we can then refine it.

Rode: Any real changes on the Scott and Shasta will not occur until years down the road. For example, if you show that the tributaries should rightfully produce four times the water they do now, those flows may never be realized.

Anderson: We are looking for a settlement that will clearly lead to an augmented water supply. I agree it will take longer to get these things in place. ADR Federal legislation is the one that authorizes studies on the facilities. BOR has the authority to do studies. Congress will not appropriate for only one year. It will take 8-10 years and the TF work will be plugged in. So far, California (DWR and SWRCB) has had little interest in looking at the tributary issues.

Russell: Since you work with the Secretary, when will you float the concept of raising the UKL level one foot?

Anderson: He will want to know what you all think and what are the alternatives. If the Klamath Project is not on board, then settlement will not go through. We will not try to ram any settlement through over the objections of a stakeholder. That just won't work. The Secretary wants all people to give a little, reach consensus on something, and he will support it.

Bullfinch: It isn't the things we don't know that are getting us into trouble, it's the things we know for damn sure that are not true. You can never have too much information. The word 'Optimum' in the Act has coalesced in people's minds to restore to historical abundance, which may or may not be possible. Optimum is the amount we can do and then we have biological, financial and social constraints. The data that have been achieved out of these tributaries falls into the watershed plan that Shasta CRMP has already established. They had set a goal on how much they attempt to increase the quantity of the water supply. The videography does not provide for doing anything specific but may give us some information and provided some opportunities for local action. These tributary studies are perceived as saying that the tributaries must provide >X= cubic feet per second. That is not it at all. What it is saying is that the tributaries can provide a certain amount of habitat at a given level of flow. There are opportunities to produce a given amount of habitat at >Y= flow but we are not going to demand >Y@ until the feasibility of doing the steps necessary to reach >Y= are acted on by the people locally. It's far too early to jump to conclusions. Let's see what the data say, see what we can get from the data, and see how it fits into the plans now in place.

Smith: I met with a group of landowners on the Shasta yesterday. I was really please at the willingness of the volunteer efforts of the people there. Trust here is real important. They are assuming that you are not going to take everything that they own through a flow study. I want to make sure the direction we are going is not going to hurt these people. It is critical that you understand that. I heard some of the things that Bob said about looking at the flows. There is a lot of information already available through the gages we have, gages that were in place in the 30's. I know there are gage data available and I know there is information already available from people already doing these studies. Troy's memory and mine are not the same; I would like for staff to get a copy of what we voted on [provided to Joan later in the meeting]

Hardy: I will be here for rest of today and make myself available to you and your groups at any time to sit down and talk about what is being proposed at the technical level. I will be happy to explain issues dealing with data and ownership. I do this for a living and am in litigation all the time. I will be very frank with you in terms of what the potential upsides or downside of what the information will be. I would prefer to do this with the full collaboration and with all of the interests represented at the TF.

Smith: That's what I am talking about. We need to be up-front with each other. If we got one study going lets not have another study going that we don't know about. We need to have all the cards on the table.

Anderson: We need information that needs to come out of the process so Thom's got to do that work. He's got to do it so that information is available to you. This information should not be kept or held close by the government at all. Thom is under direction to work cooperatively with Tribes, and other agencies: state, federal and county. Will see where it brings us it terms of the Oregon adjudication to the extent it helps on the California side. We are not going to take private property as a result of this process. It is not an option for the Secretary, he won't do this and he is against it.

Smith: I would love to see that in writing.

Rode: Has the DOI made a solid commitment to continue with the overall larger flow study regardless of this on going effort?

Anderson: This is something that Hardy needs to do for the purposes of the ADR and nobody has ever suggested to me that its going to supplant the efforts of the TF. Nobody has discussed that with me at all.

Rode: Regardless of the discussions, that could be a real outcome though.

Anderson: I can't predict the future. Hardy tells me he's not going to do enough work to answer all the questions for the TF is charged with dealing with.

Barry: This is a snapshot of the best scientific information available at this time. Lets see what the result of it is and we're not trying to second guess anything a year or more from now. If you have concerns forward them to me when I wear my FWS hat. Lets not just bring it up at TF meetings. This is not a FWS operation, it is a Secretarial initiative.

Public comment:

Crow Monk: Perceive me as not a tribal representative, but speaking for myself. I am a property owner in Siskiyou and Trinity counties who lives along the river and pays taxes. I am old enough to remember fishing the Trinity River before the dam. I remember the Klamath River how it used to be and how it is now. I understand Joan Smith's concerns, speaking of the property owners. We have another responsibility as a property owner and a tax payer; to ensure the future of Klamath fisheries resources. In acknowledging those private property rights, I think we have to remember the personal responsibility we have to one another and to our children and our grandchildren. There are two sides to the private property issue and a lot of people that feel both ways. If I can help Mr. Anderson, I am prepared to do it, regardless to the potential consequences to my property rights.

Armstrong: As TWG member I was often told that we were only taking a scientific approach. There is some science missing. That is the science of Psychology. People need to feel in control of their destiny. The purpose of CRMP is to take control and to educate, to take the responsibility to become educated and to look at problems and fix them with direct responsibility. When this process is taken away for local people, you are going to have resistance. It would have been better if CRMPs had worked with Mr. Hardy and the landowners would have felt in control of the process and understood it. If they didn't want Thom Hardy to do it, they could have chosen someone else. We are promoting in Siskiyou County the sense of responsibility and self-direction. I am very leery of advising anyone to permit Mr. Hardy onto their land, to ground truth or anything else because they are not in control of the process.

Dave Solem: The comments that I have heard today have really been good. It shows how difficult this process is going to be and that there is a level of trust that we somehow have to maintain to get anything out of it. We have been meeting with the Klamath Tribe for almost a year. Looking at this from getting this information for the adjudication or for the ADR process, I have concerns that we are mixing this strange brew of litigation, political and technical inputs and somehow coming out with something people are going to be able to live with. With this charge to meet TF or USGS goals to optimize fish, how do you consider the State of Oregon's obligations for downstream flows? How are they going to match those two thing up?

Anderson: We are going to have data that is put out on the table, I have met with you and lawyers and you provided comments on Thom's scope of work. We will work toward developing a settlement proposal that will send us forward a year from now. We will have to sit down and talk about what the different policy objectives are and what we need to do physically in terms of

water out of Oregon to meet that objective. Whether you agree with the science is an issue we will have to discuss. Secondly, whether a given figure will provide you with a sufficient amount of certainty and enough water is something you will have to decide. If California is not satisfied with the science that we have developed and the policy choices that are going to be agreed upon then it may not go through. Then you will end up litigating.

Felice Pace: I have lived in Siskiyou County for over 24 years and I am also a fisherman, by love. My organization has some concerns with the ADR and the flow studies. The refuge has rights to water that are equal to priority as the project rights because they were created in the Klamath project boundaries. We will look closely at a settlement to make sure that refuges are provided for. The refuges in recent years has tended to be on the low end of the allocation. We recognize tribal rights as superior under the law. On the Trinity River and Central Valley Project, users are undergoing water management reform. The Upper Basin interests are undergoing water management reform. I have heard from agricultural people that they want farmers in the Shasta and the Scott Rivers and the non-farmers as well to undergo reform as well. When we have reallocation, we have to have fair sharing of the pain. I share Mike Rode's concerns that flows from the Shasta and the Scott will be theoretical flows. The U.S. Forest Service (USFS) has an instream flow water right that was converted from a riparian right to an adjudication right at the USGS gage station. The right is not met even in good years. The problem on the Scott is there is no measurement and no monitoring of the amount that is taken. The good news is that a farmer friend has put the water back in creek and that creek is flowing. The bad news is that others won't do it at all. We used TF and CDFG funds for alternative stock water systems that were related to turning water back in, but we haven't got much water out of those systems. The systems have gone in, but the ditches have not been turned off. Other good news is that the message is getting through that agriculture in Scott and Shasta valleys may go through reform and maybe we can live through it. The problem is that the politicians are not providing leadership. Joan, control is an illusion and if you aim at control, you'll be disappointed. What we want is not what people own. We want what people don't own, but have appropriated.

Peter Brucker (SRRC): Our perspective is that we have gotten involved in sharing data. There is an interest in sharing data. There is a huge need for data with restoration. People need to do this watershed restoration together. Thanks.

Barry: Thank you and thanks to Bob and Thom.

15. USGS Flow Study update (Flug)

Flug: Thank you, I am pleased to be here. Please refer to Handouts H (memo to the TF Chair) and I. Item one is to provide an update on the Biological Resources Division, USGS Mid Continent Ecological Sciences Center team which I represent. Last January we sent you a memo identifying four reaches of the Klamath and requesting input from the TF regarding which reaches should be a priority to work on. All elements of the work had dollar figures. This was discussed at February TF meeting, where the TF endorsed continued participation of USGS. Following this, we prepared a new study plan for the next five years for work on the Klamath. This plan is finalized. It is not quite signed, but the Center Director has indicated he will sign it pending possible budget adjustments. In item two of the January USGS memo, the TF was charged with identifying the next reach that we would continue studying (being the lower Klamath, the Shasta, or the Scott). I am here to ask which is the priority reach. The TF also needs to be reminded that regardless of which reach we work in, a lot of these activities remain unfunded as we now sit in FY99. Since USGS is a DOI agency, we have been approached through the activities of Anderson and Hardy. We are responsible through DOI for coordinating with Hardy and that study is integrated with our work. Because of that effort, recently our focus has been on the lower Klamath. Having not heard back from the TF, we are not fully committed to the lower Klamath reach, but will be in the absence of TF input. The third item in this letter is that USGS wanted reaffirmation from the TF to stay involved; I assume that by being placed on the agenda that there is reaffirmation.

Barry: Did you provide your funding needs to the TWG so that they can factor it in to the Scope of Work and flow study costs? Because we asked the TWG to prioritize. We have affirmed we want your involvement, but want to make sure that it is integrated into the TWG's assessment of priorities.

Flug: Those dollar figures have not substantially changed from the January 8, 1998 memo to the TF. From what I have seen with the TWG budget, I believe all those figures are covered.

Barry: Just wanted to make sure this has been coordinated, because what we are getting to is a priority list which can meet your needs, the Congressman's needs, and the California Water Commission's needs. So, if you can wait for an answer until our next presentation, I appreciate it. Any questions for Marshall or comment from the public?

[none]

16. Report from the TWG (Belchik)

Belchik: This is a draft recommendation from the TWG (Handout J). Before I get underway I need to emphasize that the TWG is advisory to the TF. We are a technical organization that operates on a scientific basis. It is very difficult to separate the technical from the political, but that is what we have attempted to do. We have only met one time since the last meeting (in keeping with the schedule the TWG is going to stick to of meeting four times per year plus ranking). We tried to follow your directive Cindy, to 1) finalize the costs estimates in the summary document, 2) prioritize the ranking in the summary document, and 3) lay out a time line in association with the dollar amounts. We gave it our best shot. Regarding prioritization, there are certain elements that will have to be in a flow study; they are like legs of a chair. So as far as prioritization, we have presented a package. Cindy, regarding the inclusion of ongoing studies, we did not specifically identify studies by USGS or other ongoing studies. This is because we approached this from a biological, issue driven basis and built our scoping from the ground up to identify studies that need to be done, regardless of whether they may be ongoing. If ongoing efforts are relevant, then we should arrive at the same conclusion. We did not identify specific projects or the entity doing the work (such as the USGS microhabitat work) but rather the information need and the dollar amount. This is mostly the same document as given to you at the last TF meeting, but refined. This is a conservative estimate of what we think all these things will cost.

17. TF Discussion and review of TWG flow study recommendations

Fletcher: There has been lots of concern about the Shasta and Scott. Mike, can you explain why are they included here?

Belchik: We feel very strongly that a flow study scoping without tributary issues would not be anywhere near completed and not give us the understanding we need, even the mainstem.

Russell: Is there any duplicity on page four between Dr. Hardy's work and this work?

Belchik: The videography fits under data acquisition in the microhabitat. We can use their material, but they need additional funds to finish processing their data and that is identified in our report.

Hardy: The TF dollars on the mainstem are only used to acquire the imagery, print selected numbers of ground-truthed prints, then deliver the native raw imagery back to the TF. There are no funds allocated by the TF to classify, rectify, mosaic, and create the final GIS coverages for riparian habitat units in the mainstem.

Fletcher: Is this TWG product compatible with what Marshall has spoken to and what Thom has? If answer is yes, we should move on.

Belchik: Yes.

****Motion**(Fletcher) to adopt the TWG flow study recommendation.**

Public comment:

Carlson: There are lot of dollars identified in the recommendations that could already be obligated through on going existing studies. The effort was a theoretical assessment of what type of studies were needed and what those might cost with full recognition that a lot of that activity is already underway. Someone has to go through and see what is being done. I've only been on the TWG for one year and made three or four different meetings in that time period. The direction that I have been given is that we are advisory group, a technical group. The TWG itself makes no decisions to include a tributary or not include a tributary; that, would be a decision of the TF, that has to be very clear. The TWG is not a coordinating body. The TWG discussed Dr. Hardy's study, but we just discussed those elements that were recommended for funding. I had no knowledge of any other expansion of that project to the DOI study.

Barry: The funding needs you have identified, Dr. Hardy, came after this whole flow study process started. I do not want to leave the impression that we're going to capture your needs in this document. Yet your work has been coordinated with what's recognized as a flow study.

Hardy: Whatever external funding that I would receive (not connected to the TF) to do specific elements would only reduce dollar amounts in specific areas in the budget put together by the TWG and would be technically coordinated .

Belchik: It seems to me that there's Hardy's efforts, there's the USGS's efforts and we've identified other efforts that are not covered by either one; some of the fishery studies for example. Our dollar amounts go to all three, without speaking to who might do a study right now or what might already be going on. As I explained to you last time when I introduced this document, the fact that many of the studies were already ongoing and that people had proposed research packages made our job complicated. So we decided to look at the issues, decided what studies needed to be done based on their merit, then decided on a total dollar amount and then look at who might actually do those studies, and what things are ongoing.

Barry: I appreciate you adding that time line on the top of the page. That's useful information.

Orcutt: Under F1 Fisheries, Juvenile Outmigrant Sampling, where there's \$50k per trib, that adds up to \$800k. In the past you said that's a requirement to fill the SALMOD effort. Why do we need to do so much increase outmigrant sampling for SALMOD?

Belchik: The outmigrant sampling isn't simply for SALMOD, it is also part of acquiring a biological understanding of the river. There was definitely a consensus in the TWG that we just didn't know enough about where fish were, at what times of year and what habitats were they using.

Orcutt: Used additional to SALMOD?

Belchik: Right. As far as SALMOD, the TWG thinks that SALMOD would be useful as a learning tool and to use to understand the system, but we have some reservations about it as a predictive tool for water management, or the population affect of different water management options.

Smith: For clarification, you have a total cost of \$10,980,000.00 over four years and that's not everything?

Belchik: Yes. It should be everything for the flow study but, this cost doesn't include the cost of any mitigation or management changes. This is just for studies and monitoring.

Smith: I just want to ask you what your understanding of the flow study that we agreed upon was. You're the Chair of the TWG and so I see in here a lot of things, \$100K for the mainstem, Shasta, and Scott. What is your understanding of what we requested of the TWG?

Belchik: We were supposed to provide a flow study plan for anadromous species at various life stages from IGD to the mouth of the river.

Smith: And this goes into the tributaries.

Rode: I looked at that as a scoping effort that they were directed to do. Until we appropriate the funds or secure the funds and actually direct where focus is and at what time step, that would constitute the studies. That's my perception.

Smith: My perception is if we approve this then we would be changing what we agreed on.

Belchik: There was a lot of back and forth in discussion at the TWG level. What we finally did was ask what make sense scientifically; should they be in or out? And the answer is they have to be considered from a scientific standpoint or else the flow study would be incomplete. So we make this as an advisory to the TF, we didn't make the decision to do the flow study, we just said from a scientific standpoint, here's our results.

Fletcher: We asked Mike to go through the process of the Shasta and the Scott and why they were included, that was one of the first questions I asked him. What I would also request of staff if we're going back to the latest minutes is to get the original minutes from July of 1994 when we first decided to do a scoping. The point I'm getting at is if you're asking for a complete history, it has always been my understanding that we were talking about anything below IGD. That's always been my understanding in terms of the flow issues. And it started in 1994 when this TF passed the motion in July.

Smith: I wasn't here in 1994. However, it was my understanding when I attended that meeting in Eureka, that there was no agreement until that time and that's why it was so critical for us to reach an agreement in April of 1997.

Olson: Is Phase II to proceed concurrent with this? In the years you have in the time line there? And was there a description of that work? How should we consider the Phase II funding elements?

Belchik: Phase II would be considered a second priority. In other words, it could be done concurrently if funding was available with Phase I. We will get some more complete descriptions, but we're not going to write a scope of work for each one of these projects.

Bitts: Where is the money supposed to come from for this?

Barry: Money comes from Congressional Appropriations or from contributions by anyone to help out. This is a needs assessment to complete the flow study. The agenda has been revised to include this subject on the agenda for tomorrow's morning. I would like to restate that the authorizing legislation is to restore the fisheries to the Klamath River Basin. I don't know if there have been motions that have been made subsequent to that that would alter our original legislative intent; if so, perhaps the motions were ill-taken and contrary to what we're here to do. Did you actually make a motion you want to withdraw?

Fletcher: I think it died for lack of a second. And it's more appropriate we do it tomorrow.

*****Motion died for lack of a second****

18. Public Comment

Marcia Armstrong: Just a brief comment on the restoration objectives for the entire basin. I don't think anyone quarrels with that. It's the method in which that's addressed: whether the scoping process surfaces issues that are handed to the CRMPs to direct how they will be studied, or whether the TF will do it for them, or whether the BIA and the DOI will do it for them. That's the issue.

Felice Pace: This is an advisory committee and there have been times (unfortunate when they happen) when the agency is charged with implementing the Act has to pursue the Act. There's one time I remember when that happened even though there was not consensus. I would urge those that have concerns about this, Joan in particular, to huddle with the people in agriculture. I think it's clear that agricultural interests in the Upper Basin have realized that it's got to be done in the Shasta and the Scott; we can't have a special status for the Shasta and Scott. The CRMPs are not ready to address these issues. As a member of the Scott Valley CRMP, we can only work where there is full agreement. There's not full agreement, and we're under a lot of pressure right now from these property radical ideas that some of the politicians and other people are putting on us. That's creating even more tension and more problems in these CRMPs, it could bust them apart. We heard from the Shasta drainage; their folks think information is something that is not scary. We're going to get there folks, one way or another. Why don't we just do it together? I think that history indicates that when change is inevitable that the best thing to do is to band together and figure out how to make it happen in a way that is least destructive, the sharing of the pain idea. So I hope that folks in agriculture over the evening can get together because I think, we're hearing one thing from Upper Basin folks now and another thing from Joan in the Lower Basin.

Jennifer Davis-Marx: I just wanted to make the point that the Scott River CRMP was a little hesitant to get in on the ground truthing of the videography because we didn't know enough about it. I really feel that the glitch was in communications and coordination; not so in the actual taking on of the task. The lack of communications leads to conjecture and the conjecture was, of course, about as bad as you can get. So I think that's why we ended up as we are and I would like to go on with the whole process and just try to keep communications as strong as we can.

19. TF decision on endorsement of TWG flow study recommendations and identification of other flow study area as per January 8, 1998 USGS memo.

[deferred; see discussion under Agendum items 22-25 and Agendum 19 revisited, below]

20. Report on monitoring needs assessment for the Klamath River (Sullivan/Fletcher)

Fletcher: Last week we had this on the KC agenda. Bernice was contacting the representatives from the CDFG, Technical Coordinating Committee, and others to identify necessary monitoring project in the Basin and costs. This would assist with in pursuit of funding sources. It is becoming more critical at the KC level that basic harvest and escapement information be obtained. The Tribes are facing a crisis where we cannot fund age composition studies and there are other monitoring requirements specific to ESA. It is important that we get support from a number of different arenas. Over the next couple months I am hoping we can put together a skeleton of monitoring needs.

Barry: Should this be on the next agenda?

Fletcher: It should be a perpetual agenda item until we get funding.

Bits: Ocean fisheries are driven by Klamath Stock abundance in about 4-500 miles of ocean. We are losing essential information needed to manage those fisheries. We have got to get a line item or stand alone appropriation to cover monitoring so that we do not have to do this every year. I am asking the agencies for details on what is needed to manage fisheries and evaluate restoration programs in the basin so I can get that line item.

Barry: We have been tasked and that should be on the list. Lets remember to bring that up tomorrow when we close out that list.

Olson: The KNF for the last six-seven years has assisted in providing CDFG with escapement data for the Scott River, Salmon River, and middle Klamath tributaries. With KNF funding cuts, KNF supervisors are questioning the continued need for this escapement data. It is getting more difficult to fund this monitoring internally. If the TF and/or KC provided a letter emphasizing the importance of this information, it would assist people like myself in showing the importance and ensuring this monitoring continues.

Wilkinson: I support the concept of a letter from the TF. It should be coordinated with the PAC; (however, they have recently lost their charter).

Fletcher: It would be most appropriate if it came from the KC. The KC is considering a couple letters in this regard. We could ask KRFWO to slide a copy of the draft letter from KC to us as an example to consensus by mail or something. I do not know what your time lines are, Al. I'm sure the sooner the better.

Olson: The issue comes up now more than ever.

Wilkinson: If Al could provide a draft letter today or tomorrow, we could act on it as a motion and refer it to the KC for adoption also.

Olson: Can I get you and Troy to help me on it?

Wilkinson: Yes:

Fletcher: Yes.

Orcutt: This identification of monitoring has been lingering. No disrespect be Bernice, but things are not moving here. I would hate to have the managers of the fishery be without the information next season.

Rode: The progress on this task troubles me also. We talked about this with Bernice last meeting. We are not getting anywhere. We should find out why and perhaps ask another to do this.

Barry: Has Bernice contacted you on any of this?

Belchik: She held one meeting before the Klamath Falls meeting. Since then there has been no contact.

Fletcher: In her defense, she did make some progress. She expressed her desire to get on top of this.

Barry: No doubt about it; she said she would do it. To bring this to closure, let's identify the specific shortfalls quickly so we can add it to the priority list of funding needs tomorrow. Please give this some thought between now and then. The overall monitoring needs are also important.

Public Comment

Brucker: For monitoring in our subbasin plan there is a monitoring section for the Salmon River if that is helpful.

Barry: Troy, please ask Bernice to look at those plans and incorporate into the needs assessment.

Agendum 20A [Amendment to agenda re Outmigration and Spawning escapement]

[Halstead provided Handout L on juvenile outmigrant trapping in the Klamath and Trinity]

Questions and Answers on Outmigration

Wilkinson: Why are there only two traps now when there were five before? We had traps that showed the IGD, Scott, and Shasta contributions.

Halstead: We had the Scott and Presidio Bar traps. BOR funded them in the past. We wanted to track the response to the pulse flow, but with good water years there has not been the interest.

Fletcher: The Yuroks ran two at Omegar Creek and Weitchpec. This year those were some of the projects which dropped out. This is another example of the decrease in funding for monitoring.

Shrier (Pacific Corps): Why were the numbers so much higher this year?

Halstead: Water temperature never got above 80 degrees F. Flows were higher throughout the year. To really put your finger on it, you would have to look at a lot of different variables.

[Halstead also summarized spawning escapement (Handout M)]

Questions and Answers on Spawning

Barry: Does this come under the category of monitoring for our list?

Halstead: Yes.

Fletcher: In 1996, 1997, and 1998 fish are coming in later, but making it to the hatchery at the same time. It seems this should be addressed in our flow study.

Rode: The IGD hatchery manager said they got up there about a week late this year.

Wilkinson: This report seems to show a gradual increase in mainstem spawners. Would you care to hazard a guess as to the relative percentage of mainstem spawners?

Halstead: I would not guess on that, but one of the things we have observed is a lots of areas of unused spawning habitat; lots of areas that look suitable but not being used. If this means under escapement, I do not know.

Rode: The proportion of mainstem spawners is in the megatable. My recollection is that it is not that large. We have had some high flows the last few years that may have added gravel to the mainstem and improved spawning habitat.

Public Comment:

Doug Hirsch (Horse Creek, CA): In the first report, it says no hatchery marked steelhead smolts were captured on the Klamath River. I know fishing regulations have changed so consistently lately that it is hard to keep up with, but don't all native steelhead need to be released immediately? Isn't that in the current fishing regulations? And if that is the case, what is going to happen a few years down the road when these fish come back into the system? There is going to be no fish for the fishermen to catch if these are all native because there was no marked fish.

Rode: The steelhead this year at IGD hatchery were all marked. But in 1996 and 1997 we didn't mark any steelhead. We can't retroactively go back and mark brood years 1996 and 1997. That is something that we are going to have to live with. Yes, it is going to limit your opportunities to keep fish. You are right.

Orcutt: On the Trinity River relative to marking of steelhead, there were probably two years that steelhead weren't not marked, and that directly affects the issue you are talking about but now the strategic plan calls for marking of all steelhead. Yet those two years that were missed there are going to be years that people are going to be fishing out there and there will be no steelhead to keep.

Pace: This is for Bruce and the other folks that were involved in the discussion, Al and Mike. A couple statements were made that both in the mainstem and the tributaries, there appears to be a lot more spawning habitat than is being utilized. Does that lead to a conclusion or at least a hypothesis that spawning habitat is not the limiting factor? Is rearing habitat may be more of a limiting factor?

Halstead: That is exactly what we think has happened on the Trinity; that spawning is not a limiting factor, that it is rearing habitat. Especially when you look at coho and steelhead that have to stay in the river for one, two, maybe even three years.

Rode: We met with the Klamath River Guides Association in response to that letter they wrote. One of the things that we provided at that meeting I am passing out copies of and that is the 20 year record of steelhead releases from Iron Gate Hatchery and also adult escapement to the hatchery for steelhead and coho (Handout N). I didn't want to leave this group and the public with the notion that steelhead were not marked at Iron Gate Hatchery this year. The entire production was marked with an adipose clip and 35,000 fish were released at 10.2 to the pound on May 1. Water temperature was 49 F, and flow 1900 CFS. So it is quite interesting that not one was caught at the Big Bar trap which suggests that either they are not out migrating or not surviving real well, or what ever. It is a red flag and it adds to some other indicators that gives us great concern that the steelhead program is not working real well. We also marked fish in 1995 with an adipose ventral mark. So there are some marked fish out there. We didn't mark in 1997 but we had a very small production of 10,000 fish in 1997. The returns have been extremely poor the last few years. The adult return went up somewhat last year, I don't recall exactly what the numbers were, I think it was a little over 100 adults.

Hillman: I appreciate you bringing this information back to the TF. I know that over the past several months, living in the middle portion of the Klamath River, I often get asked the same question that the gentleman asked yesterday. I am not able to provide very good answers, so I appreciate you bringing this information back to us. I would also point out the need for there to be some sort of information distributed perhaps in the fishing regulations if possible or maybe press releases to advise fishermen as to which sort of marks to expect and where to look for marks. That has been another frequently asked question that I have heard on the river, what sort of mark are we looking for? Is an adipose or a ventral fin or what? So that sort of information would be helpful as well.

Orcutt: I think a good document to look at as far as the basis of the management is the Strategic plan for the department where it lays out the strategies for harvest for marking.

Hirsch: I have not talked to any of the guides, but I did talk to one of my friends who has a lodge on the river. He has had very few fishermen this year because of the restricted regulations. The steelhead that are being caught, it is very hard for someone to distinguish is this a hatchery fish or is this a native fish? It is real interesting that in the screw trap that there was not one hatchery steelhead caught. Maybe it is just coincidence, but if the trap is not catching marked steelhead, how about the fishermen that are fishing? They aren't catching marked steelhead either. Hopefully CDFG will look at what has happened, relax the regulations a little bit, get the hatchery on target where we are marking the fish, so we don't lose the steelhead fishing completely. The Klamath used to be world renowned for its steelhead fishing, and you can hardly get anyone out there fishing anymore.

Fletcher: I don't know if CDFG will be able to because they have signed a memorandum of understanding, right, with NMFS? But I wanted to ask Don something about the memorandum of understanding. I understand that there are specific time lines that are associated with different tasks. I know that the State of California has to begin to look at these forest practice rules. I do know that there is some language in there associated with agricultural and grazing activities in the MOU. My question is: 1) How are the time lines coming along in terms of the performance by the state with that MOU; and 2) Is there serious consideration to amending or beefing up the Memorandum of Understanding (MOU) considering the recent lawsuit in Oregon with Oregon's coho plan?

Reck: First of all about the MOU implementation, I don't have a lot of specifics on that other than I know there has been some activity and interaction with CDFG. They are starting to have some discussions about cumulative effects analysis. I know that NMFS has provided some funding to try and jump start implementation of the MOU. Also I think we are starting to see a little bit of movement on their water shed protection program. Regarding the second part of your question, you know we withdrew the proposal to list northern California steelhead ESUs and there are some rumblings about what is going to happen as a result of that. However, where steelhead have already been listed, we are currently developing a 4D rule. In sharp contrast to our previous 4D rules, this one is going to be more complex and might be more useful. Speaking to the folks who are talking about the steelhead fishery, I think you are going to see some very concrete guidance about fine tuning fishing regulations for individual populations and how they effect them. I think that is really going to help out and become a very useful tool.

Pace: Can I get a copy?

Reck: Not at this time. I have seen a draft. It was only made available a few days ago.

21. Second Annual Private Landowner Award (Bulfinch)

Bulfinch: This is the second annual award by the TF for recognition of restoration work by the private sector in the Klamath Basin anadromous fish program. You will note that this is now the Nathaniel Bingham Memorial Award. Nat Bingham was a very special person who cared about Northwestern California's magnificent environment, and the lives it supports and sustains. He was involved in almost every major fisheries issue for the past 20 years, predating the TF by a long time. His untimely passing this spring is a great shock and grievous loss to the west coast and to the nation, as confirmed by memorial eulogies in both houses of Congress. Nat was a gentle, good and moral man, with passion for what he believed in, but also treating others with genuine dignity and respect. Nat Bingham's spirit and dedication can never be replaced, but this award is made to individuals and organizations who best exemplify his legacy to the maintenance and restoration of our priceless natural resource.

The first award is for Peter Brucker of Salmon River Restoration Council (SRRC). Peter Brucker began his contributions to the objectives of the Klamath River Restoration Plan, years before the formal plan was established. He was a key member of the advisory committee that assisted the FS to develop a Spring Chinook Recovery Plan for the Salmon River. Poaching of spring chinook was a significant threat to springer survival. Rather than suffer a very expensive and intrusive law enforcement project, Peter organized ASalmon Ed®, an educational project designed to address the issue pro-actively. This program was proven extremely effective in 1992 and 1993, and resulted in former poachers, educated about the need to conserve the springers, becoming an informal ANeighborhood Salmon Watch®, which intervened with anyone who tried to poach salmon. This has resulted in a significant decline in poaching. ASalmon Ed® led to formation of the SRRC. School kids and their parents, informed about the needs and problems of salmon, led the Salmon River schools in development and implementation of watershed education, (including adopt-a-stream monitoring) worked on grazing issues with Forest Service and local permittees with compatible exclusion fencing, fire proofed the private residences of all Salmon river senior citizens, performed riparian restoration, established GIS capability in the Salmon River, implemented a ground breaking riparian fire risk reduction

project on private lands, established a native plant nursery; and, coordinated annual fish counts in the Salmon River when the FS could no longer perform them.

Peter and the SRRC are the finest example of local control and input to restoration, there are many more positive things that could be listed, but we will close with the acknowledgment that the SRRC has contributed more voluntary hours per restoration dollar than any other entity in the Klamath River Basin. Thank you, Peter, for your demonstration of the finest example of cooperation between local residents and the government agencies to achieve a common goal.

Brucker: I am honored. Lots of people contributed to this.

Bulfinch: The second award is for Tom Freeman on the Shasta (Dave Webb accepting). Tom Freeman, and his parents (Willard and Mary Freeman) operate the Freeman Ranch along the Shasta River. This year, he has completed three quarters of a mile of cattle exclusion fencing on both sides of the Shasta River on his ranch. This section contains some of the best remnant woody riparian vegetation in the Shasta Valley. Trees were planted and caged, and irrigated using a combination of TF, Cantara Trust Funds, Great Northern Corp., Weed High School, Shasta CRMP, and of course Tom Freeman himself. This is not only a significant portion of the Shasta watershed where exclusion fencing is beneficial, but plans are to use this project for experimental grazing that will allow future use of the exclusion zone for the benefit of livestock, without damage to trees or bank stability and water quality.

Webb: The exclusion zone is 300 feet wide on both sides of the river. It is very impressive.

Bulfinch: The third award goes to Blair Hart of Shasta Valley.

The selection of Blair Hart, is a great pleasure for me. Blair has been my personal representative on the TF's important TWG. He is one of the primary motivators behind the formation of the Shasta Valley CRMP. He has worked tirelessly to bring the Shasta Valley community into a pro-active role in water quality and fisheries issues. It is obvious that many obstacles of mistrust and neighborhood relationships needed to be overcome to do this. However, Blair has been the glue to hold the program together, and last year, saw the completion of the first comprehensive watershed-fisheries restoration plan generated by private ownership, within Siskiyou County.

Blair: It's an honor and I am surprised.

Bulfinch: In addition, thirteen Certificates of Appreciation were awarded to: Richard Barnes, Callahan; Dave Black, Etna; Don & Pat Brazil, Ft. Jones; Mike Bryan, Etna; Bill & Corina Eiler, Ft. Jones; Bob Eiler, Ft. Jones; Jeff Fowle, Etna; Ken Fowle, Etna; Tom Hansen, Etna; Ray Platt, Etna; John Spencer, Etna; Tom Tobias, Trespinos; and Ben Tozier, Ft. Jones. The basis for the awards included projects for: bank stabilization, riparian zone protection and restoration, sediment reduction, instream habitat improvement, fire protection, water conservation, and temperature reduction, tree planting, irrigation trail water recovery systems, and local development of watershed recovery plans. The projects were funded from a variety of sources, and included of thousands of hours of volunteer effort. The recipients of these awards were nominated by their peers, from a field of approximately 50 participants.

Smith: Thanks to Kent. It is important to give recognition to cooperators.

October 16

Reconvene

22. Adoption of Programmatic Spending Priorities by the TF for FY2000 (Orcutt)

A. Guidance to Budget Committee in defining levels of funding

Orcutt: I have the TF adopted revisions of the RFP process. Some years we have gone through no or minimal battles in the budget development since we adopted the rule on how left over monies are allocated, but last year we started to backslide and deviate from the process. There were CRMP, harvest management projects, and other projects which fell below the line. I

have my idea on how to prioritize on these items. Beyond that, lets see how you want to prioritize in the RFP that will go out for FY2000.

Hamilton: Mike, you have been very active with the Budget Committee (BC); that is why your name was put on that agenda item. The document Mike has is the adopted revision of the RFP process. In that document it calls for the TF to give guidance to the BC in defining levels of funding at this October meeting.

Russell: The CRMPs are not in the top priorities. They seem to be doing some important work. I know Joan is concerned about this. We need to keep them going.

Fletcher: We need to have this conversation again. Last year we spent ~\$125k for CRMPs from our limited funding. Some CRMP proposals came in very high. We need to have clear standards, expectations, and funding levels. Let's wean the CRMPs and identify what they get off the top (perhaps not subject to the competitive process). CRMPs are the one area where we have deviated from the agreed to process. I would like to see CRMP go for other funding.

Olson: I would like to mirror the comments Troy has made. We do know that we are on notice for the life of this program.

Wilkinson: I am not in disagreement. It is probably time to reinstitute the BC. We need to come up with some priorities. It's probably a good time to do this and bring a recommendation to the joint KC/TF in regard to priorities.

Barry: So we have these members on the BC now: the DOI representative, Rode, Miller, Orcutt, Fletcher, and Smith.

Wilkinson: I want to volunteer. Those meeting should be open to the TF, but I feel strongly there should be a fixed BC with a firm number of votes.

Russell: I will volunteer if they are in Yreka. Even if I can attend as member of the TF.

Barry: I would suggest that the BC convene soon. We are looking at revisiting this allocation process. I would like to see a meeting in November. I will ask the DOI person to be at that meeting as the chair. KRFWO will get out a memo out on this soon so the BC can meet and get out priorities before the February TF meeting.

Olson: Is it anticipated that review of the CRMP funding and performance will be addressed by the BC meeting?

Russell: Madam Chair, I think it should be. I think I heard yesterday from someone that has money that they might be an avenue for CRMP funding. The BC could be the forum.

Bulfinch: The question is not whether we should set standards for CRMPs; it is what is the best way to attack the problem of addressing habitat issues on private lands. Put the priorities out there and less emphasis on who is doing it. So, BC, please try to put it in line with the priorities; first, don't make it worse and second, stabilize the patient so we can go forward with rehabilitation.

23. TF Discussion

Barry: We need the list of needs for Congressional Staff and California Water Commission. I see how they are interrelated and appreciate comments, Al, on the priorities of different budget categories. We need to hear from the TWG and USGS before we give a charge to the BC.

Orcutt: I am unclear on the task the group is going to do. I think we need to review the set asides and see where they fit in with a flow study. I do not know where it fits into priorities with respect to appropriations.

Fletcher: I will respectfully disagree with some of what Kent said about the subbasin planning efforts. The TF needs to deal with that issue. The Yurok Tribe has personally been subject to attacks by CRMPs on harvest issues and other issues where I feel it is inappropriate to use TF dollars in that manner. There needs to be clear expectations and criteria out of the CRMP planning effort.

Orcutt: To summarize, the two things the BC would need to do is look at the existing priorities for the million dollars and then look at the priorities beyond the million like the report the TWG will give.

Fletcher: We do have an outline for priorities when it comes to scoping of a flow study. The broader list you are talking about can be done in a half an hour if we are looking for a generic approximation. We need to have priorities.

Barry: Last year the best we could do was endorse KFA memo. We heard yesterday they are looking towards getting something officially from the TF. I view the BC as having the primary responsibility to revise our internal procedures, how we rank proposals, and target our money by category. That would be the goal for the first meeting. Second, there is the issue of a priority list to influence the FY2000 budget cycle. If the best we can do at this point is take our 1) Scope of Work (SOW) and act on that (which is the next agenda item), 2) a monitoring needs assessment, and 3) the need for gages, then we have a good start. We can put this in a mold and say here is what we have discussed to date and these are our list of priorities. We need to do it soon, certainly before the next meeting.

24. Public Comment

Public comment:

Pace: I wanted to talk about the appropriations process for benefit of the discussion because TF members may not have a complete understanding of it. There are two places where individual members can go. One is that the budget recommendations for DOI are going forward. There is an opportunity in November and December for folks to take that work plan back to DC. The first thing that will happen in February, the members will come down to the appropriations committees and make their requests known. If we are going to have any of our representatives in the House make requests to the Interior appropriations bill committee members, that has to happen in February. There is also the public meeting day in the House. Any member of the public can go and make a five minute request; KFA will put together some recommendations. I would hope the TF can build on the success of adoption of flow study recommendations because we need the same thing in the restoration project area. Yesterday Dave (Bitts) read a letter regarding the priority of dealing with water quality in the mainstem. I would hope that the BC would bear in mind when they set priorities. Through some process we need to do the same thing in terms of where we want money. Do we want funds for the purchase of conservation easements (like on the Freeman Ranch on the Shasta)? If we had a mechanism, we could institutionalize these conservation efforts. Those are the kind of thing we need to get into. The hard issues coming down. They are related and influenced by ESA. We could get out ahead if the TF is proactive.

25. TF Decision

Fletcher: I can put these needs down on paper and take a crack at some of the other needs over lunch.

Barry: That would be useful; thank you for volunteering. Mike Orcutt, do you have any summary remarks?

Orcutt: We submitted testimony in support last year. The bottom line is that increased funding is necessary. Federal agencies need to be working in collaboration with organizations that can work the political front; that is where we need some strength. If the BC is going to take that on, great.

Barry: We will send out notice to all TF members but addressed to BC members to remind them of the BC meeting Nov. 20 in Yreka starting at 10 AM. Regarding the recommended flow study scoping document by the TWG, I would characterize this as the best assessment of scientific need. These are real needs. If we do not see them as real needs, then we need to discuss whether they should be included.

Smith: I took a close look at the draft document. We have a work in progress for some of these study elements, for example with the Shasta CRMP (i.e. UC Davis water quality study). We do not need to spend money on redundancy. It is real important that we go through the CRMPs, get the information that is there, and if they need only a little money, then finish the process that is existing.

Barry: This includes the ongoing work.

Belchik: That's true. We recognized that there are a lot of efforts that are going on. A prudent next step is probably to list ongoing studies. However, evaluating ongoing studies to see whether they are applicable to our needs is not as simple as it sounds.

Barry: Obviously, we do not want to double fund.

Belchik: It is not our intention to double fund, but the ongoing studies may not fill the requirements of our scoping. For example, if the ongoing water quality model did not address daily DO fluctuations, it would not be applicable because we have identified that in our scoping process as a major issue in the mainstem Klamath. Ongoing studies really need to address the questions and study issues we have identified.

****Motion** (Bitts) Adopt the flow study package.**

****Seconded** (Smith) with a friendly amendment that we work with the CRMPs.**

Bitts: As maker of the motion, I accept but at the risk of making it too complicated. I would broaden the funding amendment to include other ongoing efforts.

****Motion Restated** The TF endorse the TWG flow study plan (Summary of Flow Related Recommendations) provided that ongoing projects by the CRMPs, Tribes and others be included in SOW to the extent possible.**

Rode: This is umbrella document subject to a lot of changes. As we address each task in here, we will have another chance to approve the funding on a year by year basis for what we fund.

Barry: This will be a guiding document for the flow study. We welcome the contributions of everyone to this flow study. It is understood.

****Motion Restated** TF endorses the TWG flow study plan (Summary of Flow Related Study Recommendations) provided that ongoing projects by the CRMPs, Tribes and others be captured in the scope of work (SOW) to the extent possible.**

Wilkinson: Nothing should be excluded. This should be simpler.

****Motion Restated** TF endorses the TWG flow study recommendations (Summary of Flow Related Recommendations) provided that ongoing projects by the CRMPs, Tribes and others fitting within the SOW be implemented in a coordinated manner.**

****Second accepts****

Public Comment

[None]

Orcutt: We have been trying to draft something too benign. It is not appropriate to second guess the implementation of this. There needs to be someone in the driver seat of this flow evaluation effort. The TF and TWG may not be the appropriate body. Some leadership needs to be demonstrated. I will not vote for it because there are too many caveats. Scientists do need to not be hemmed in.

****Motion Fails** (4 No's, 3 Abstain)**

****Motion** (Hillman) The TF adopt the TWG flow study recommendations (Summary of Flow Related Recommendations)**

****Second** (Fletcher)**

Hillman: My motion is intended to a simple reflection of a simple matter. That is the report that was handed to the TF by the TWG.

Smith: I oppose. It does not protect the work on the ground by the CRMPs. I want to remind the group that Heger's representative will help with funding if we have a consensus recommendation. If not, they will not help with funding.

Belchik: The CRMPs contributed to the process extensively, especially in terms of issue identification. Dave Webb was invaluable when we identified causative factors in the Shasta Basin.

Wilkinson: In answer to the Joan's concern, in under item two under Fish Biology: there is an inclusion of ongoing activities.

Barry: The document was not intended to exclude any ongoing efforts.

Belchik: We state right up front when we discuss the general strategy that there is no intention to reject or duplicate. This gets to the heart of Joan's concern.

CAUCUS

Barry: Your motion does not exclude any data or studies, correct?

Hillman: On the first motion there was confirmation that the TF supported the report that the TWG has done. My motion keeps it at that level and reflects what I heard the TF saying.

Public Comment

McCovey: My problem with the first motion is that the scientific aspects will be compromised if you start putting limitations on the study. I applaud Leaf for making the second motion because it is clear. I do not see where anyone is being excluded. I have a problem when political agendas hamstringing the efforts of this body to achieve the goals of the Klamath Act. I applaud your efforts in this regard yesterday, Madam Chair.

****Motion Fails** (2 No's Smith and Russell)**

****Motion** (Russell) That the TF accept the recommendations of the TWG as presented and the TF retain all authority over existing and future projects.**

****Second for discussion** (Wilkinson)**

Rode: Maintain authority over existing and future projects is not very clear. We only have authority for what we fund.

Bulfinch: We already have authority for our own projects.

****Motion withdrawn****

Barry: We will consider the TWG recommendations at a future time.

26. Report on Midprogram review (Fletcher)

Fletcher: We developed a subcommittee to oversee the product (with one meeting at the Yurok Tribal Center) and made it clear that it is our intention to let Bill do the study and let the cards fall where they may.

Wilkinson: Who are the committee members?

Kier: Nat Bingham, Mitch Farro, and Mike Rode.

Wilkinson: Were there other meetings since then?

Fletcher: No, we wanted to give Kier full rein.

Kier: I will go over some of the stickier points of the evaluation, then I will turn over the microphone to Pat Higgins. His contribution to the assessment of habitat conditions and the status of fish populations in the basin will be of interest to you. Then I will explain to you how we will close out this presentation with your input. Remember, we set aside harvest management for a future evaluation. [Kier next reviewed the Tasks in the Agreement]. Finally, I will pass out the draft midprogram review (Handout O). This draft shall be revised with your input and delivered at the next meeting to the TF.

Regarding our methods, we tried to go through the paper trail of the TF minutes and just about drowned so instead we went through the interview process. Interviewees were granted anonymity. We extracted our finding and recommendations from these sources. I will selectively go over the findings: Most of those interviewed seemed to dwell at length on the consensus process and rule. We do not think you are using the rule of consensus the way it should be. Rather, you are abusing it. By mixing Robert's Rules of order with consensus, you have gotten into a preposterous quagmire. By this manner, you have accomplished a great deal to deny each other but little to get to >yes=-instead. For example, the TF is still wallowing around in the flow studies highlighted in the 1991 LRP. This does not serve the program well and will not wash. Our recommendation is that you go to consensus rule school. We are mindful that this process was thrust upon you. But you need to get professional help. You are contemplating a retreat. We suggest you have a facilitator come in and teach you consensus in the retreat.

A couple more observations. It has been often said that program is mature; it has done a wonderful job in some respects. The LRP is good, but did not go into the subbasins; it needs to. Planning at that level is still necessary. The structure is in place and should contribute to future efforts.

On Section 7 of the report, take a hard look at this graph. It shows the cumulative amount of money being managed by KRFWO. It has grown over time even though basic appropriation has stayed steady; even though the staff has been reduced. This is the work Hamilton does with two other professionals. Those folks are overloaded. If you are going to give the twice or three times as much to administer, then recognize that they need more support.

[Pat Higgins next provided a presentation on Section Three (assessment of the status of fish populations in the basin) and Section Five (assessment of habitat conditions) of the Report].

Kier: So that is both the good news and bad. We really think the program has done wonders in the Scott and Shasta valleys. I do not see anything out there in other basins we work in which has rooted the restoration program in the minds of landowners. I would like you comments by mid December and we will consider your comments in our revision. We will compare this program with other west coast anadromous fish restoration programs, then we will bring you back a final product at the February meeting.

27. TF Discussion

Barry: I would like to set aside a few minutes to ask questions of you. I think that it would be appropriate to take a break for lunch as well. We will set 10 minutes aside for questions. I want to focus this discussion. We all appreciate the 60 days to respond in writing with questions and concerns. I want to harken back to Troy's opening remarks by recognizing that this is an impartial review of what has happened out there in the last 10 years.

Hillman: I have had this since yesterday, so I haven't had a opportunity yet to thoroughly examine the document. I have skimmed through portions of it, and the first thing that jumped out at me was that I had assumed that one of the mechanisms that would be used would be looking at final reports from programs that were funded by the TF. Is that true?

Higgins: It was not.

Hillman: I will go ahead and make two comments. The first one, I am looking at page 6 and 7, (Section 5) under pond rearing. There is a comment made at the end of the first paragraph about information not being available despite numerous attempts. I believe there are reports available at the KRFWO that would shed some light on this. The same comment is again made on page 8 in regard to the Karuk Tribe and Northern California Indian Development Council (NCIDC). So, I find that an unfortunate excuse that is used in the evaluation. On page 8 under Camp Creek and Red Cap, unfortunately no information is available. I find that to be ridiculous. And then there are assertions made following that statement that are even more

ludicrous. You made the statement that very high returns to Red Cap and Camp Creek since 1995 suggests artificial culture may be contributing to these basins. I will grant you that. However, Apond reared fish from Bluff Creek may be straying in Red Cap and Camp causing increased returns. The latter is actually more likely given the early spawn timing of the majority of the fall Chinook returning. That is the most ludicrous statement I have heard in my life. The Bluff Creek program has been discontinued for 8 years. All those fish are marked, never once have we seen one of those fish show up in Red Cap or Camp Creek, and I am insulted that you would include such a thing in this report. It gives me cause to go through the rest of this report with an eye for that sort of shabby work by you.

Higgins: Leaf, I am really glad for your interest. Obviously you are much more available sitting here that you were over the phone when I called you five times. I completed my work on this assignment, FWS had informed me that the reports were not available, and my contacts in the NCIDC office in Yreka, who I was referred to by your fisheries office, yielded no indication that there were any reports that were available. I am glad to hear that those reports are now available.

Hillman: Those reports have been available Pat, and if the field office has anything to say about that, there have been reports submitted on those projects every year. There are quarterly reports submitted and if the field office can not find those reports that is certainly not my problem.

Barry: We have been given a 60 day deadline to submit information back. So within 60 days, I would assume that you are going to provide the reports.

Hillman: I am not going to provide reports. But I would expect Pat to have the courtesy to go to the field office and get the reports from the field office before he goes including statements that are a little bit out in left field.

Barry: If you find an inaccuracy, any member here, please do your best to provide the substantiation yourself to correct the inaccuracy within 60 days. Lets take the ownership now, each and everyone of us.

Higgins: In regards to the run timing in Bluff Creek, basically that was identified by Jerry Boburg of the Forest Service.

Hillman: Well there is no attribution to Jerry Boburg in that statement. If that is where it came from, then please indicate such.

Kier: Why don't you and Leaf work this out.

Wilkinson: I will direct this comment to Kier. Is it your view or is it my perception that the KC is included in this program review?

Kier: It is my understanding that harvest management issues were not a part of this evaluation and that the TF and presumably the KC thinks that an evaluation of the harvest management program deserves its own evaluation effort.

Wilkinson: I can agree with that. But there are activities, in my view, and other interests with KC activities and members that are an integral part of this program. I can certainly see where there could have been some misunderstanding there when we did eliminate section 9. But having helped develop the RFP, it was my view anyhow, that the KC was involved in the broader view of the operation in that they were an integral part of the rehabilitation act.

Kier: There have been interactions between the moving parts of the restoration program, the KC, TF, TWG, the Yreka Office and so forth. In terms of the interviews conducted, there was relatively little involvement with KC. The relationships we looked at were those that were rather intense between the TF and its advisory committee, and the Yreka Office, and that is where we got focused. If we missed the mark, why I would be glad to take your comments.

Wilkinson: Just a very short follow up. From my prospective, seated in both seats, I have decidedly different perspectives on the TF than I do on the KC. I have been concerned when I was interviewed for the TF perspective that I never got the opportunity to provide a KC perspective.

Kier: Because you serve both bodies, that may be more keenly on your mind than it was on others. The missions are quite the same thing. We made that point in the institutional analysis.

Wilkinson: That is correct, but it is still all the same legislative act and all the same legislative goal.

Kier: Point is well taken. We are talking about the intent of the Act, Patrick.

Wilkinson: Thank you Madam Chair. I am going to ask your advice Madam Chair, on the issue of the exclusion of KC from the mid-program review. Maybe the original RFP shows or does not show what our intent was, but for reasons other than specific harvest, there needs to be a review of KC activities and its relationship with the TF. Specifically, on the issue on the support for the KC's information needs and those types of things. How we might deal with that issue if ?

Barry: I am going to ask Bill to respond.

Kier: Lets do it this way Keith, why don't I give you a call when we all get home. Lets talk about this a bit and before that I will go back through the data base and see just how much guidance we got from other interviewees. You made the point that you really didn't get to that when we interviewed you and so I will pick it up with you on the phone and then see if we can't satisfy your concern between now and the final draft.

Barry: I would only add that if you are going beyond the scope of the intent of the study then we have to alter our arrangements with you and delay the third item.

Kier: Yes, it is kind of ambiguous. It is kind of like what was pointed out earlier meeting, that the TF could operate under a majority rule or consensus rule. They have that option. When the harvest management issues were removed from the plan of work, there remained, however, in the institutional analysis, a reference to the KC. So the relationships between this body and that body, I think Keith is quite correct in suggesting, should be part of the institutional analysis.

Wilkinson: I hear your suggestion and agree with it Bill, but I would like some definite perspective from this group supporting that so that it is a direction that we are in agreement on.

Kier: O.K. I was not at the TF meeting where the decision was made to remove harvest management issues from our plan of work, and so I don't know whether you all intended that we involve the KC members as well as the TF members. Can anybody help me on that.

Fletcher: It would be appropriate if I do since I'm the one that exercised my veto authority, the power here to remove that. I have a number of reasons why. But before I go into those I want to make sure I make it clear that I never intended to exclude any analysis from your review in the institutional analysis section that would identify areas of concern or how well the KC does interact with the TF. I do think that is an important component of that and there have been recent issues that have popped up. For instance last meeting, this group received a request from the KC to do a little bit of work. The TF has hardly ever, to my knowledge, requested that the KC do work for them.

Kier: My perception was two bodies just sort of operating in isolation from one another except for people like Keith who set on both.

Fletcher: And myself. We couldn't agree to do the work for the KC so what does that say about two sister agencies, when one does not respond to the others request? That is one issue. I do think that it is important that we review that. There is also a clear connection between harvest activities and the goals that occur here and vice versa. If we do a review of issues surrounding harvest, it will take more than the two tasks that were identified (9.1 and 9.2). I think if we do something like that, it is fair to open up a can of worms for everybody. I don't necessarily say I would support that right now either. I also think it is fair to address larger issues relative to those KC type issues. Some of those are: Does the KC deal with other species other than the fall Chinook® and the answer would be pretty darn rarely. Another is: What is the status of steelhead in the basin and how are harvest issues addressed to the KC relative to steelhead, Coho, with spring Chinook®. That is beginning to become more of an issue. I would have liked to see more detailed, thought out lists of tasks for review. The appropriate body to supply those tasks is the KC.

Higgins: It sounds like the institutional aspects of the KC and its relationship to the TF is fair game under our current contract. Instead of telephone interviews and the tag that goes along with that, members should just add to their comments before the 15th of December, anything that they think is relevant to that relationship of the KC.

Kier: I think I have heard what Keith and Troy would like us to do. That is to do some digging, to do some interviewing, and to make clear the relationship between the two bodies and the degree to which the interests of the TF in particular are addressed in the activities of the KC.

Barry: Right. We now have run out of time on this particular issue. I suggest if you have individual questions or comments that you talk to Bill and get those concerns resolved on your own. We are going to go forward.

28. Public Comment

[None]

29. TF Decision on adoption of report

Barry: Please get Bill your comments by December 15, 1998.

30. Status report on 1999 operations and Long Term EIS (BOR, Wirkus)

Wirkus: I did not bring a handout as I usually do. I will send you a summary of the 98 operations now that the water year is over. We did issue a 98 operations plans in early April. We were dealing with a forecast of about 150 percent of average. It continued to rain until the 9th of June, then stopped. There has been no measurable precipitation since. The Williamson River gauge, a good indicator of inflow to the lake went from 150 percent of average to in last few weeks to 2 of average. There has been talk of spring influence, but the Williamson gage indicates we are rainfall dependant once we get past the runoff period. In the early season, there was essentially no irrigation demand; first deliveries were not until twenty fifth of June. Then use went above average from the end of July to September. On the upside the moisture regime allowed us to meet target operations. We are now at the FERC flow and have had discussions with Pacific Corps about winter flows. With our current operations, there is very little risk of not filling the lake with this operation - we expect precipitation this winter. That's it for operations.

[no questions on operations]

From the Planning Process, in December, we issued a Draft Environmental Assessment (EA) with alternatives for an annual operations plan for 1998. That included hydrology considerations for conditions ranging from dry to average. Considerable comments were received. In April we issued a final Environmental Assessment (EA) and plan only reflecting above average situation. To categorize comments, there were four major groups: comments on impacts to anadromous fishery, impacts to UKL dependant fishes, impacts to agricultural, and comments on refuges. I am pleased to see the TWG flow scoping nearly completed and the TF supportive of it. That and the work by Dr. Hardy will help us refine the fisheries portion. We are in consultation with NMFS and expect to see a Biological Opinion before too long. I expect that we will be encouraged to do a multiple year consultation. We can talk about it later. There is continuing research on the UKL issues. We have a meeting that will wrap in some of the TMDL Clean Water Act efforts with what we know on the lake with respect to Water Quality. I expect to see a good forum to synthesize the information we have on UKL. More work has been done on hydrology with respect to refuge impacts as part of the ADR process. We are working, at least the preliminary stage, with University of Oregon on an Agriculture economics model. We will see if it can be adopted to estimate impacts to at least project irrigators. We are in the process of meeting with Commerce and DOI as a team to develop a clear process regarding the 1999 plan and where are we going. We are going to start a periodic update to reflect progress toward long term planning. As part of the ADR, there is another negotiating subgroup to help provide recommendation which includes representatives from the Klamath Tribe, irrigators, refuges, myself, and the state of Oregon. Our product has not been defined, but at least it is a smaller group. Within the next couple weeks BOR should get title to Agency Lake Ranch which was a water storage acquisition. With that we believe we can provide an additional 10k acre feet of storage without any major modifications. This should have a water quality benefit as well.

Questions and Answers

Barry: Would you cover the proposed schedule on the EIS (Handout P); we have the July 6th handout, is this current?

Wirkus: Discussions continue about the finalized schedule and I will provide updates to the TF. We need to react to and consider things like the ADR process, as well as flow studies, like Dr. Hardy is doing. We are in a process of looking at that dynamic.

Barry: That is encouraging.

Hirsch: As far as IGD, two main problems we seem to have in the Klamath are temperature and oxygen. Have there been any studies looking at bottom withdrawal from IGD especially during summer months?

Wirkus: Opportunities are very, very small.

Kilham: With a lot of what Carl is doing (ADR process) it is going to be important to have flow information. I don't mean to sound disappointed, but I am. It is really important for you to approve the flow study scoping. We need that information.

Barry: We will continue to conduct various flow study elements.

Wirkus: The flow study is going forward. We have to get the study information to get to resolution of the water issues in the Klamath Basin. An endorsement for a flow study going forward is more important than the TF putting sideboards on a study. For those of us attempting to get funding outside the TF for a flow study, we need the endorsement.

Barry: We did have a volunteer, Troy, who said he would put together a list of funding needs.

Fletcher: I did not follow through; I will put something together in the next several weeks in preparation for the TF budget meeting we spoke to earlier.

Barry: Any of you who have thoughts to contribute to Troy, please do that. I hope this afternoon we can come up with consensus on priority funding needs; I know that Marshall Flug wants some direction. I will follow up with Marshall. They are a very important partner.

Belchik: Marshall asked me to remind you that he needs to know what section is the next USGS should work on. They need it by October 1. The TWG did take a look at USGS scope of work and our recommendation to the TF at that time was to work on the Shasta next.

Barry: I recently saw something regarding the importance of mainstem work.

Hardy: I believe that was in reference to the memo from Marshall to Mike Spear (inaudible). USGS gave you three choices; USGS said they were starting work on the mainstem.

Barry: John, please get us a copy (Handout I, already provided).

Hardy: Marshall also asked me to remind you that once you say where you want them to work, it also means the funding beyond USGS= staff time. They can't do the work without the funding. I believe that in the memo it is ~\$370k.

Barry: We haven't cover the priority list. Marshall was on the agenda earlier and we need to get to that decision. Let's read the correspondence.

Smith: How does this fit in with what we are doing? We haven't passed a budget. I think we should wait.

Barry: When Marshall was with us in February, he was seeking guidance from us. My understanding was they would be using their own internal base money as they have been doing; they are just shifting focus from one basin to another. I wish he was here to answer these questions. Let's pass on this one. I will voice the TF concerns in a private conversation with Marshall and see where he wants us to go from there; to find out from USGS how we can breach this gap.

31. Discussion of the Self Determination Act

A. Tribal Perspective

Crow Monk (Karuk Tribe): I got the idea from the agenda that this was talking about different interpretations of the Indian Self Determination Act. It warrants a little discussion about what it is and what it isn't. It's an act that was passed in 1975 and it has been amended ten times. In 1994 they amended the law again and made it permanent. That is when they included the other agencies within the DOI besides the BIA. The purpose of the Indian Self Determination Act of self governance is exactly what it implies: to get rid of Federal paternalism with regards to Tribes which are sovereign nations. Everyone talks about Indians and tribal government and why do they get these special privileges like it's affirmative action. This is based on preexisting functioning governments that signed treaties with the United States of America or during the European insurgence. Only sovereign nations can sign treaties with other sovereign nations. This is a political rather than racial distinction. We are not going to go all into the Indian history, but there was a great deal of paternalism for years and years. President Nixon signed into law 93638 The Indian Self Determination Act, the point of it being is that all of these program services, functions and activities that were part of trust responsibilities from the treaties. In other words the Indian people in signing the treaties, gave up land, gave up resources and there was a trust responsibility in almost all of the treaties. If you look back in them, they say they are going to take care of health and welfare, education, hunting rights and fishing rights, all of those things that we talk about as trust responsibilities. There came a part of recognition that the tribes as sovereign nations could better handle their own affairs and assume their own responsibility for their own affairs. With the Karuk tribe, besides our Self Governance Compact with the BIA, we run our own clinics, our own headstart programs and childcare programs. All of these functions that used to be provided from the outside are now under Self Determination; the tribe does them themselves. The idea being that someone in Washington obviously can't make decisions about local conditions in Happy Camp. Another assumption that congress made and that President Nixon made was that as the tribes took over and assumed more and more responsibility for those trust services, that there should be downsizing in the federal bureaucracy. We have a compact, an agreement, with the Secretary of DOI, and it included all of the other agencies within the organization. There are numerous other activities that affect our trust resources, including fisheries, water, and that sort of thing. The Karuk proposal that initiated a lot of this discussion about what is Self Determination went to Portland and we had a discussion up there and it came down here to the TF. I think there was a misunderstanding because the Tribe has operated programs for years through the TF and the RFP process. What we were going for was not taking money away from the TF but working with FWS to take care of our projects separate from this TF process, which is in fact our right under the law. We work through the budget process in cooperation with the BIA. We determine what our needs are, and build it into the budget right on the front end which is what you folks were talking about a little while ago. When we go to agencies for programs the standard answer is we don't have any money to do that. Part of the reason there is no money to do those things is because no body ever asks for it, because the Tribes and the other people are not involved in that front end process of identifying projects through the appropriations process.

I sense that a lot of people feel intimidated by Tribal Self Governance. We never intended for that proposal to come before the TF out of the one million dollars of funding. There are some interesting things within the law itself. It talks about dealing with other programs and services within the various other federal agencies that would be reported and published annually in the Federal Register. Under FWS, it's fish population surveys, habitat surveys, restoration, ESA programs, outdoor classrooms education, environmental contaminants, and wetland habitat construction. What this allows us to do is design programs locally that will meet our needs as tribes as governments that have the responsibility for the communities on our sections of the river and to deal directly with the Secretary in either negotiating within the existing funding level in the DOI. Siskiyou County can't do that, agencies can't do that. Federal agencies are limited in not being able to lobby. What you can do is sit down with the Tribes and look at programs suggested by Tribes on the merits of the program. Then lets try and get the money. If that involves creating a budget line item separate from the TF or on top of the TF, then that's what we have to do. Danny has been on the negotiating rule-making committee, so I'll defer to Danny to answer any questions there may be.

Danny Jordan (Self Governance coordinator for the Hoopa Tribe): We've been involved with Self-Governance from the beginning. In fact, I testified before the original hearing before the House Appropriations Committee in 1988 when the first law was authorized. Federal agencies have two responsibilities. One is to manage resources for the public trust and the other is fiduciary trust responsibilities to Tribes. The Allocation Agreement is what led to the actual formation of the KC and TF is a lot of what that was all about. This Allocation Agreement was the first time that an agreement was made on a Klamath River that actually determined how to divide up the stocks. Prior to that we had spawning escapements of 16K fish and we didn't have that kind of understanding where we were trying to go. We sat down and established a governmental forum, there were five agencies on it. What was agreed to then, there would be some standard set for the Klamath River; a 65 percent harvest rate; 35K minimum escapement floors, etc. It's been confirmed by the Supreme Court, that the Indian entitlement is 50 percent of the harvestable surplus. What the Self-Governance Act does is it provides a legal mechanism for those Tribes that have that legal right to say we have an interest in how those stocks are managed.

Congress passed the Expansion of the Act in 1994, that authorized Self-Governance be applied to non-BIA programs. The Klamath, Hoopa, Yurok and Karuk Tribes have the most successful Self-Governance agreements in the nation with non-BIA programs. It has to do with our capability, our level of sophistication that we've developed internally but it's also that we are willing to set our standards and put them out there and tell people what we we're trying to accomplish. It gets to be difficult when a federal agency wears one hat says that you are Trustee managing 50 percent of that resource for Indian Tribes and the other 50 percent is managed for general public. I'll tell you why we did Self-Governance in the first place. Indian Tribes have negotiated agreements and have expected certain things in return for that. On the Trinity River, we didn't know they were going to build a dam in 1955. The dam had as a requirement to preserve fishery resource that was part of that Indian right. Between 1963 and 1974 about 80 percent of the fishery resource was destroyed. Now we are here about 22 years later, we don't have the fishery restored, we have coho salmon are listed as threatened, and steelhead that are candidates for listing. We have chinook salmon that are three to five years from being considered as being listed. We have North Coast fisheries shut down. We have Indians and sport fishermen being restricted and right on top of this the BOR for 1999 had proposed in their budget to reduce the fishery management budgets for the Trinity River from \$6 million to \$1 million wiping out all the programs. The Hoopa Tribe is working to correct that. We look at how do we leverage actions and get responses by federal agencies, that our agreements are signed with.

The Self-Governance Act has a wide range of possibilities. The way it was designed was really with the intent to create a partnership. In Section 404 of the Self Governance Act, it says that the Secretary of Interior shall submit budgets consistent with implementation of Self-Governance agreements. It's supposed to be a pro-active process, where we try to get ahead of some of these problems. The point is if we keep doing what we're doing we're not going to restore the river, we're probably not even going to protect other species from being listed. We worked with the draft that Self-Governance Act passed in 1994, to develop guidelines to implement it, knowing that there's a number of other entities besides Indian Tribes and Interior agencies that are involved with resource activities including fisheries on the Klamath and Trinity River. Guidelines were put out by the Secretary which said that the agency that oversees a budget is responsible for coordinating those negotiations with those third parties. We don't have real successful implementation of that process yet. What we intended to do when we developed the guidelines was create a mechanism where by Tribes can sit down with agencies and develop standards. Once those are set, the budgets would be set along with that. The agency would start incorporating those things into the budget process and then one, two or three years later when those budgets begin to materialize you have the whole scope of the program. That is generally what we have tried to do with Self-Governance and we are open to discussion. We don't control all of it, the agencies don't control all of it, the states don't control all of it and you don't control all of it. We have to figure out a process that works.

Fletcher: I am going to speak specifically to what we have done with FWS this year. We have Self-Governance negotiations with NPS, BOR, BIA and others. We are trying nail down some process issues for us to coordinate with the FWS. Some of what we're looking at is identifying potential projects that we can do that will be of benefit to the fisheries resources in the Klamath Basin. We've approached it from a two-prong approach. We've indicated that we want to get in to a negotiation that would lead to an annual funding agreement. We think it's appropriate that 1999 funds have already been identified and allocated to the Yurok Tribe or incorporated in to that agreement. We see that as a straight forward process, this group has already decided on those funds and that would be an easy mechanism to secure that to the Tribe. We'd also like to discuss with FWS the potential to develop a few projects in the future. A large part of the relationship is identifying future needs and projects where we can together march forward and help pursue various sources of funding for those. Within the TF, 90 percent of the items we talk about are funding related; Self-Governance gives us the opportunity to go out and try to do something about that. We have to all be on the same page when we're looking at budgets.

Barry: Thank you. We are enlightened by your perspectives on the Self-Governance issue. Now we will have the federal agency perspective.

B. Federal Agency Perspective (Colleen Kelly, DOI Solicitor's Office and Bill Maxon, FWS Intergovernmental Affairs, R1)

Colleen Kelly: I've had a little experience in the Self-Determination Act and Self-Governance Act programs. I'm a lawyer from Portland, OR in the Solicitor's Office. My primary client is the BIA. Occasionally I've done some work for the NPS and FWS. The Self-Determination Act legislation was first enacted in 1975 and has been amended repeatedly over the years. The amendments have reflected the developing federal policy of Self Determination and the government's relationship with the Tribes. It started with Self Determination Act contracts and it's now evolved into Self Governance in which three of four Tribes that are here are active participants and have been since the very beginning. For those of you who are familiar with legal

sources and want to read it on your own you need Self Determination Act. The title one part is found at 25 US Code Sections 450 to 450n. It basically allows federally recognized Tribes or Tribal Organizations to contract with DOI agencies and the Indian Health Service (IHS) and HHS from the statute, to plan, conduct and administer programs or portions thereof, that are authorized by various acts identified by the Self Determination Act. Generally those are programs provided to Indians. There are relatively new regulations, that were worked long and hard on, they're now found at 25 CFR Part 900. Those deal with contracts as opposed to annual funding agreements or compacts. ISDA, the Indian Self Determination Act, is a mandatory statute in that it directs BIA and IHS to enter into contracts with Tribes who request them and provides very limited and clearly articulated reasons to decline. If the reason doesn't fall within that then it's a mandatory obligation, on part of the BIA to justify a contract with those Tribes to perform that work. In a general way of speaking, they are required to transfer the amount of money the federal agency would have spent on that Tribe for that program to that Tribe to perform it. There are intense negotiations that go on between the Tribes and the federal government on exactly the amount of money involved. The purpose here behind this Act is to let the Tribes to have the maximum ability to participate in planning and directing the programs that serve their communities on the theory that they know what their communities need, therefore they should be out there planning and directing those programs. The Act allows the Department to reassume operation of the program only in the most extreme situations and it's an extremely high standard of inappropriate operations. On the other hand a Tribe may choose, after it has operated the program for a while, to return it over to the government for operation for whatever reasons they deem are important.

As an example to give you an idea what this means in practical terms many of the Tribes in the Portland Area office have contracted realty and forestry programs. Indian Trust Land that has timber growing on it needs to be managed for timber production and there are foresters, economists and other sorts of specialists that used to be hired by the BIA to manage the timber forests for the Tribes. The Tribes now hire the same sorts of experts and run the programs themselves using the funds that the BIA formerly spent. Same with realty programs managing trust lands.

The second part of the program and it's probably more relevant to you is Self Governance. In 1988 a demonstration project began for Self Governance and started with a few Tribes. It moved to more Tribes and in 1994 that project was made a permanent part of Self Governance/Self Determination Act, it's now known as Title 4 of ISDA. While it was made permanent in 1994, they're still working on the regulations. Those are still being negotiated. Proposed Rules were published in the Federal Register February 12, 1998, for those of you who are regulation readers, found at 63 Federal Register 7202. If you're truly interested in where the Self Governance program is going, it's helpful to read; it shows you those areas in which there has been agreement on how to implement the program and it also explains and identifies those areas where there are still disagreements. One of the major differences with Self Governance is what was explained with everybody here this afternoon, that the program not only covers the same sorts of programs that were covered by the contracting program in Title 1 but it also includes the opportunity for Tribes to add to their existing annual funding agreements those programs offered by other DOI agencies. They could be programs those other agencies provide or operate that benefit Indian because of their status as Indians. On the other hand, there are those programs which have for the Tribes special geographical, historical or cultural significance. Those are the ones that the Tribes can request be added to an existing Annual Funding Agreement (AFA). Basically the theory is, the Tribes enter into compacts with the Secretary of Interior or of HHS. Those compacts do not necessarily get amended they can last from year to year and there is an annual funding agreement which details the programs that the Tribe is going to be operating and the amount of funds that get transferred. As was mentioned earlier, the limitations on the programs are that they can't take those portions of the programs that are determined to be inherently federal. My only exposure to that is in the context of BIA programs. The other limitation which is in the statute is that Tribes are not authorized to add to their annual funding agreement, a program where the statute establishing a program doesn't authorize the type of participation sought by a Tribe. It's about as wishy-washy, and hard to pin down you can come up with. Obviously the statute itself was probably a matter of negotiation and no doubt that's going to be the subject of a lot of disagreement between Tribes and potential federal agencies depending on those programs.

Bill Maxon (Inter-Governmental Affairs Director): What we, the FWS, are faced with is just what you have heard from the two very eloquent Tribal people. What we have is a work in progress quite frankly. With the Self Determination Act, one of the problems that we are all challenged with is that we're sort of making up the rules as we go along, because those rules and regulations of how to implement that act are still on-going. A number of our people are quite frankly afraid of what may happen if they make a decision. This whole process is about is how do we best serve the needs of the natural resources that we can protect, enhance and somehow meet the needs of both the general public and the Tribal Trust responsibilities that we have. We're learning how better to do the Self Determination, how we enter in to our Trust responsibilities. I think the real proof of that is a year ago there was no one point of contact in the Portland Regional Office, FWS or any region in the country as far as Tribal Trust responsibility or Tribal liaison is concerned. There is now mandated a Tribal Liaison in each Regional Office.

What we have done in this region has stepped that down and are getting as many of our Field Office up to speed as possible so there is one point of contact at that level. For instance, in the Arcata Office is David Solis, we're going on with that now. What we also understand is that those points of contact and in some instances even myself, don't meet the strict definition of government to government relationships. Those folks right now don't have the authority to agree to a number of the decisions that they are going to be talking to or dealing with the Tribes on a day to day basis. Eventually some of those things will happen but right now most of those are, and rightly so, left with our managers. What we need to do is do a better job of making sure those decision makers are in place when Tribes come to negotiate, when the Tribes raise their hand and say we need your help, to help us put together these kinds of programs or projects that can benefit both natural resources and Native American people. Crow Monk has said that there has been one program, one contract, one Self Determination funding agreement by the FWS in the whole nation since it started. Well, that's one more than I know of, and that's not good. In this region what we need to do is work with the Tribes to identify those places where we can help each other and identify those programs that we can go forward with and to ensure that there are funds to do it. When I said about it's not about money, it really isn't; we really need to see how best to use what resources we have to do a better job, whether it be this TF, or the FWS. The other point of that is if the natural resources of fish aren't going to wait for us to get all that done. We need to do that as quickly and as best that we can. I would be glad to come back and sit down and talk more about this and some other ways we can work with Tribal members on this and the other folks to do those agreements.

Barry: Thank you

C. Question and Answer

Russell: When it comes to Self-Determination, do I understand you to say that the U.S. will not turn over sole management of that resource and/or the funding it takes to run that resource? It is a question I would like to know as a citizen.

Monk: It goes to the concept of inherently federal functions. Now with FWS or BOR I don't know that we've gone through that exercise of comparing each position description backed up by the statute to see if it's an inherently federal function or not. But that would tell you what the core stamp is of inherently federal people and it would tell you all the other people who aren't necessary under statute.

Barry: If a budget proposal sets specifically that for this particular project the funds were going for this Tribe, what happens if our budget request to Congress, the whole FWS budget is X amount and Congress appropriates less than X amount? Does that mean that particular item doesn't get funded therefore you don't do it? Or are you expecting that that particular project will be conducted and that we'll have to absorb that within the money that Congress does give us.

Monk: That's negotiated individually in each funding agreement. We've got standard language in there that says "subject to appropriations." In the case of the compacts with BIA where they are somehow formula driven by land area or by population or by what ever it is, and they're having reductions like in 1996, what they ended up doing was taking 13% across the top, so in fact the Tribes took the same hit as the agencies. There is language right in front of the agreement that's "subject to appropriations because we know we cannot spend money that's not there."

Jordan: I want to make one clarification on the budget process. This is what this group, as well as the KC, really needs to take a look at. You can make or break any program by how the budget is developed. I understand there was a request for \$2.5 million for this program a couple years ago. If this group and the FWS were to ask that two year planning process for whatever budget do you want and the Service supports that, and that is what's reported to the President's budget, that's what you get. That's where the real advantage is because we have statutory provision to get into that budget process.

Barry: We have absolutely strict Congressional guidelines that tell us that we cannot move money around within the FWS other than what the Congress has appropriated to us. That's by very specific items. I don't want to leave you with the impression we have, as an agency, authority to move money around once we get Congress= appropriation, because we are absolutely prohibited within very strict reprogramming guidelines.

Jordan: Once the budget is submitted by the President to Congress you are bound by that. Once Congress approves the budget you are bound by that. You have discretion, because it's within the agency's overall budget, to ask for more money within the Klamath River to be included in the President's budget.

Barry: Thanks very much for coming

32. Upper Basin Amendment (Wilkinson)

Wilkinson: There has been no reason for UBA subcommittee to meet since the last TF meeting. It has been seven years that we have been working on this and we need to resolve it.

33. TF Discussion

Russell: The TF is aware of the factors surrounding the UBA. It is not dead, but again our community is really deeply involved in a huge legal process of negotiations with the Klamath Tribes and would not at this time vote for approval for document. I offer the encouragement that there are ongoing projects that are important that would restore water. If you have proposals, we urge you to submit those to us to see if it can or can't be done. Agriculture is in support of the refuges in good times and well as bad. I remind the TF that with the Hatfield working group that good things are taking place in the basin. At this time, with the adjudication process up in the air, I am going to be reluctant on approval of the UBA; those are my instructions from the Commissioner. I want the TF to know we are not sitting up there on our hands; we have done a lot and we have a lot to be proud of.

Wilkinson: Much good work has gone into the document. There was an attempt made at the last meeting to reclassify as a resource document. That failed. The UBA should be retained. At the state that it had been approved, all issues had not been reconciled but unresolved issues were so identified with both opinions stated. It is an excellent technical document. To me, the UBA is too valuable to abandon or table. It should be retained as a resource document.

Bulfinch: When is the adjudication process done?

Russell: Completion target date will be in 2000. Claims will be looked at earlier, in 1999, hopefully, if everything goes well.

Bulfinch: In view of that and with so many unanswered questions, the almost concurrent opportunity to make changes in the releases from IGD and Copco with FERC relicensing (starting with deliberations in 2001), and the restoration projects the Hatfield Working Group (HWG) is engaged in, I would like to recommend that the UBA be offered to the HWG coordinator for information and action. A complete amendment be deferred until the Tribes and county are ready for finalization of their adjudication. That will keep the UBA in cold storage and available for such actions that are in the future of benefit to habitat.

****Motion** (Bulfinch) The UBA be offered to the Hatfield Working Group (HWG) coordinator for information and action and a complete amendment be deferred until the Tribes and county are ready for finalization of their adjudication.**

****Second** (Wilkinson)**

****Friendly Amendment** (Wilkinson) Identify the document as the May 1997 (revised).**

****Maker of the Motion Accepts****

Russell: It could be used; I support the concept. It does not kill it but puts it in cold storage until we have better view of what is going to shake out of this legal process.

Bulfinch: We can always change the date; the intent is not to lose the valuable work that went into this. At the same time it does not represent an extension of responsibility to the TF to the upper basin.

34. Public comment

Jim Carpenter: I think on balance we would support it. Don is right on. I would like to offer we were instructed to form a cooperative agreement with the other players in the Klamath Basin, the TF, the Trinity TF, and Klamath Compact Commission, under the terms of (inaudible) passed by the last congress. Not only was it passed, but we received our initial 1 million dollar appropriation to do work. So we have momentum. The UBA draft may be a useful tool in crafting the much simpler cooperative agreement where we might keep the ball in play with out taking on some of the potential liabilities or issues associated with the document.

Kilham: We would be glad to see it put in cold storage.

35. TF decision and assignments related to Upper Basin Amendment

****Motion Restated****The October 1995 Upper Basin technical document draft be offered to the coordinator of the HWG as a reference tool and that it remain there until the year 2000 adjudication or until other opportunities (for adoption by the TF) result.

Rode: Would you consider retitling the document?

Barry: Would subcommittee object to retitling the draft?

Wilkinson: No.

Barry: Does that address your concern, Mike?

Rode: I would title it something like ADraft Upper Basin Resource Document@.

****Motion Carries ****(Rode, Fletcher, and Orcutt abstain)

36. Retreat/alternative to LIAM (Barry)

Barry: We discussed the concept of a retreat as an alternative to an LIAM. As part of background for a flow study, the purpose of LIAM is to understand the legal and institutional barriers to this group. We decided not to fund the LIAM. We have contacted Lamb and said we will not be doing it, but floated the idea of a retreat. At that point I said that I would look into FACA limitations. Yes, FACA has them. You can't have closed meetings unless the president determines otherwise for reasons of national security and some other reasons.

37. TF Discussion

Russell: I support the idea of a retreat totally.

38. Public comment

[None]

39. TF decision

Fletcher: I do not want to have a retreat, but I do want to have a party. I will invite each of you to that. We can discuss issues of camaraderie.

Barry: Thank you.

Agendum 19 Revisited

Fletcher: In recognition of motion that failed earlier, I'd like to offer another motion.

****Motion****(Fletcher) The TF endorse the TWG flow study recommendation (Handout K). In addition, the TF recognizes the necessity of addressing instream flow issues in the Shasta and the Scott Rivers and encourages all cooperators to participate in this effort.

****Second****(Wilkinson)

Barry: Thanks for offering the motion in the spirit of cooperation. Lets make a copy for everyone.

Russell: While you are waiting, to digress, I want to tell you about some of the restoration efforts in the upper basin. I have had 35 thousand willow starts in my cooler waiting for planting, they have been put in the ground now and are growing

profusely. There have been several offsite watering stations have been installed, with many more programs ongoing to do work within the streams themselves. It's a big ship to turn with respect to riparian restoration but we are coming around. There have been some very positive responses from the community.

****Motion Restated** (Fletcher) The TF endorse the TWG flow study recommendation. In addition, the TF recognizes the necessity of addressing instream flow issues in the Shasta and the Scott Rivers and encourages all cooperators to participate in this discussion.**

Discussion

Fletcher: The Motion is there to try to cover Joan's concerns. It is important we clarify that this group is in support of the TWG recommendations on flow study scoping and that Scott and Shasta issues will be an important component of that. One supports the other.

Smith: This does put the Scott and the Shasta under the microscope. I am not sure "encourage" is the right word.

Rode: Can we substitute "other tributaries" for "Shasta and Scott"?

Wilkinson: Joan, I thought you wanted the Scott and Shasta mentioned. You are satisfied if we strike Shasta and Scott?

Fletcher: I will add any language to make sure they are involved, but what has to go along with that is that it is a necessity to address the flow needs of the Shasta and the Scott.

Bitts: How about "it recognizes the necessity of addressing instream flow issues throughout the Klamath Basin"?

Fletcher: Add "and encourages all cooperators to participate in this effort".

Rode: How about "and will facilitate the participation of all cooperators in this effort"?

Smith: I like it.

Fletcher: I don't like it; we have already bent over backwards. I do not want any additional requirements for this body to have to facilitate.

Barry: What is wrong with "encourage"?

Olson: How about "foster"?

Public Comment

Hirsch: Use "encourage and help facilitate"?

Fletcher: I feel we have already compromised. We are stepping into the asinine here.

****Motion Fails** (Smith - No, Russell - abstain)**

Olson: If I proposed the same motion with the word "foster" in there, would you abstain?

Fletcher: Yes.

****Motion** (Olson) The TF endorses the TWG flow study recommendation. In addition, the TF recognizes the necessity of addressing instream flow issues throughout the Klamath River Basin and fosters the participation of all cooperators in this effort.**

****Second** (Bitts)**

****Motion Carries** (Orcutt and Fletcher - abstain)**

[Deferred]

41. Set the date and location for the meeting after next (Hoopa, February 4-5, 1999). Identify additional agenda items for the next meeting.

Report from KFMC

Fletcher: At the KC, we discussed the need for a joint meeting Feb 4-5 in Hoopa: the KC needs to do this. They need to inform the TF about harvest related issues; harvest monitoring requirements, and the fishery management process. We also recognized that quite a bit of time is being spent on the Shasta River issues. It would be good to have the TF aware of those issues. The other thing is that the KC needs to foster a cooperative working relationship with the TF. The KC did ask the TF to do some work and the TF refused to do it. It's fair that the KC get an answer on whether we are going to work cooperatively or not. There are some other things. The TF may have some information or perspectives to provide to the KC as well. Here is the opportunity. I request that you consider this and ask staff to go ahead and set that up.

Wilkinson: Troy touched on it, but I want to emphasize that the KC felt that the focus of the meeting should be on budget issues that affect the KC. I suggest, because of concurrent sessions that may have to take place, that we have a facility large enough to take care of both; that would be either Yreka or Eureka. The KC had a February 24-26, 1999 time slot.

Fletcher: I would speak to somewhere near the coast if Mike cannot find the facilities.

Orcutt: Eureka or Arcata would be OK. Hoopa has hosted a number of management team meetings. Every once in awhile we need to meet in communities within the Basin.

Barry: It's possible we could do Hoopa in June. But let's discuss the timing.

Orcutt: The 24-26th would be better.

Wilkinson: The budget allocation discussion is important. I suggest that one evening we have a mandatory non-business dinner. Eureka would be the first choice, the second, Yreka. We could do it in two days.

Barry: When would we conduct just TF business?

Fletcher: The 24th, 25th and 26th.

Russell: Let's consider a lean agenda for ourselves.

Wilkinson: We need to lay out location and time slot, then have the Chairs coordinate.

Barry: We have the gist of this and will work together. Look forward to a memo from me regarding the need to resolve the Chair/vice Chair issue. I will provide in the memo the feedback I receive from the Secretary's office, so please read it carefully.

Adjourn

PCFFA COPY GOES TO GLENN SPAIN and DAVE BITTS

HANDOUTS GO TO TF AND TWG ONLY

Put out revised agenda on Klamath List Server once Ron signs